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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 336

L. METCALFE WALLING, ADMINISTRATOR OF THE
WAGE AND HOUR DIVISION, UNITED STATES DE-
PARTMENT OF LABOR, PETITIONER

vs.

JACKSONVILLE PAPER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 24, 1942
CERTIORARI GRANTED OCTOBER 19, 1942

TRANSCRIPT OF RECORD

**IN THE
United States Circuit Court of Appeals
FIFTH CIRCUIT**

No. 10118

**PHILIP B. FLEMING, ADMINISTRATOR of the Wage
and Hour Division, United States Department
of Labor,**

Appellant and Cross-Appellee,

versus

**JACKSONVILLE PAPER COMPANY, ET AL.,
Appellees and Cross-Appellants,**

(AND REVERSE TITLE)

**APPEAL AND CROSS-APPEAL from the District
Court of the United States for the Southern
District of Florida.**

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JOINT STIPULATION OF COUNSEL AS TO
PRINTING RECORD
Filed Nov. 24, 1941.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIFTH CIRCUIT,

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED
STATES DEPARTMENT OF
LABOR,

Appellant

v.

JACKSONVILLE PAPER COM-
PANY, a corporation, ET AL,

Appellee

Civil Action
File No. 10,118

It is hereby stipulated and agreed by the parties by
their undersigned attorneys that the following portion of
the transcript of record of appeal need not be printed:

Beginning with the opening statement on Page 40,
after the words "THE COURT: ALL RIGHT", and ex-
tending to Page 68, through the following statement:

"MR. KURZ: YES, SIR."

Dated: Jacksonville, Florida, this 31st of October,
1941.

IRVING J. LEVY
Acting Solicitor of Labor

GEO. A. DOWNING
Regional Attorney

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RAGLAND, KURL & LAYTON,
By L. KURZ
Attorneys for Appellee

**DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

Filed
July 8 1940
Edwin R. Williams Clerk

**PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,**

Plaintiff,

v.

**CLIFFORD G. McGEHEE, M. R.
McGEHEE, and CLYDE C.**

**McGEHEE, co-partners doing busi-
ness as SOUTHERN INDUS-
TRIES; and JACKSONVILLE PA-
PER COMPANY, a corporation
organized and existing under the
laws of the State of Florida,**

Defendant.

Civil Action
File No. 209-J
COMPLAINT

I.

Plaintiff brings this action to enjoin defendants severally from violating the provisions of Sections 15 (a) (1), 15 (a) (2) and 15 (a) 5 of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C., Title 29, Sec. 201 et seq), hereinafter called the Act.

II.

Jurisdiction of this section is conferred upon the Court by Section 17 of the Act.

III.

The defendants, Clifford G. McGehee, M. R. McGehee and Clyde C. McGehee, reside in the City of Jacksonville,

Duval County, Florida, within the jurisdiction of this Court. The said defendants are partners doing business under the firm name and style of Southern Industries, and are, and at all times hereinafter mentioned were, the sole owners and operators of a place of business and manufacturing plant, located at 23rd and Evergreen Avenues in the said City of Jacksonville, Florida, where they are engaged in the production, sale and distribution of paper, paper products, brooms, mops, coat hangers, and other similar products. They are hereinafter referred to as the co-partner defendants.

The defendant, Jacksonville Paper Company, is, and at all times hereinafter mentioned was, a corporation organized under and existing by virtue of the laws of the State of Florida, having its principal office and place of business at 808 West Bay Street, Jacksonville, Florida, within the jurisdiction of this Court, and is, and at all times hereinafter mentioned was, engaged at its said place of business in the said City of Jacksonville and in its various branches as alleged in paragraph IV, *infra*, in the purchase, sale, distribution and delivery, at wholesale, of paper, paper products, brooms, mops, coat hangers, and other similar products in interstate commerce. It is hereinafter referred to as the corporation defendant.

All, or substantially all, of the corporate stock of the corporation defendant is owned by the co-partner defendants, who are in turn the managing officers of the said corporation defendant; and all, or substantially all, of the goods produced by the co-partner defendants are sold and disposed of to the corporation defendant, which in turn distributes a substantial portion of such goods in interstate commerce, as alleged in paragraphs IV and VII, *infra*. In addition the corporation defendant purchases from other concerns located in States other than the State of Florida substantial quantities of similar products which it in turn sells, distributes and delivers in interstate commerce, as herein alleged.

IV.

(a) At all times hereinafter mentioned the co-partner defendants have employed and are employing approximately 105 employees in and about their said plant at Jacksonville, Florida, in the production, sale and distribution of paper, paper products, brooms, mops, coat hangers, and other similar products and in processes and occupations necessary to such production. The goods produced in the said plant are made of raw materials, substantial quantities of which are purchased and transported in interstate commerce from and through states other than the State of Florida to the said plant in the State of Florida, and substantial quantities of the goods produced by the said employees in the said plant have been and are being produced for interstate commerce and have been and are being sold, transported, shipped and delivered in interstate commerce from the said plant in the State of Florida to, into and through states other than the State of Florida.

(b) At all times hereinafter mentioned the corporation defendant operated a main office and warehouse at 808 West Bay Street, Jacksonville, Florida, under its name, Jacksonville Paper Company, and also operated under separate trade-names nine branches in the State of Florida, two branches in the State of Georgia, and one branch in the State of Alabama, as follows:

Florida Paper Company, Jacksonville, Florida
Everglades Paper Company, Miami, Florida
Central Paper Company, Orlando, Florida
Pensacola Paper Company, Pensacola, Florida
Capitol Paper Company, Tallahassee, Florida
Tampa Paper Company, Tampa, Florida
Pinellas Paper Company, St. Petersburg, Florida
Lakeland Paper Company, Lakeland, Florida
East Coast Paper Company, West Palm Beach, Florida
Macon Paper Company, Macon, Georgia
Atlantic Paper Company, Savannah, Georgia
Partin Paper Company, Mobile, Alabama

At all times hereinafter mentioned the corporation defendant has employed and is employing in and about its main offices and warehouse and in its branches approximately 180 employees, engaged in the purchase, sale, distribution and delivery at wholesale of paper, paper products, brooms, mops, coat hangers, and other similar products. Substantially all of the business conducted by the corporation defendant through its said places of business and substantially all of the operations performed by said employees are concerned with goods handled, moved, or shipped in interstate and foreign commerce and are an essential part of the stream of interstate and foreign commerce.

V.

During the period beginning October 24, 1938, the effective date of Section 6 (a) (1) of the Act, and continuously through October 23, 1939, the said co-partner and corporation defendants severally paid to many of their respective employees wages at rates less than twenty-five cents (25c) an hour for their employment in interstate commerce and in the production of goods for interstate commerce, as aforesaid; and, during the period beginning October 24, 1939, the effective date of Section * (a) (2) of the Act, and continuously to the date hereof, defendants severally have paid to many of their respective employees wages at rates less than thirty cents (30c) an hour for their employment in interstate commerce and in the production of goods for interstate commerce, as aforesaid. By failing and refusing to pay to their respective employees wages at rates not less than the said rates during the said periods, said defendant have severally violated and are severally violating the provisions of Sections 6 and 15 (a) (2) of the Act.

VI.

During the period beginning October 24, 1938, the effective date of Section 7 (a) (1) of the Act, and continuously through October 23, 1939, the co-partner and cor-

poration defendants severally employed certain of their respective employees, who were engaged in interstate commerce and in the production of goods for interstate commerce, as aforesaid, for workweeks longer than forty-four (44) hours, and did severally fail and refuse to compensate the said respective employees for their employment in excess of forty-four (44) hours in such workweeks at rates not less than one and one-half time the regular rates at which they were employed, and, in fact, did severally fail and refuse to compensate them for such excess hours at any rates greater than the regular rates at which they were employed; and, during the period beginning October 24, 1939, the effective date of Section 7 (a) (2) of the Act, and continuously to the date hereof, said defendants have severally employed certain of their respective employees, who were engaged in interstate commerce and in the production of goods for interstate commerce, as aforesaid, for workweeks longer than forty-two (42) hours, and have severally failed and refused to compensate the said employees for their employment in excess of forty-two (42) hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, and, in fact, have severally failed and refused to compensate them for such excess hours at any rates greater than the regular rates at which they were employed. By employing their said respective employees for workweeks in excess of the said hours during the said periods without compensating them for their employment in excess of the said hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, said defendants have severally violated and are severally violating the provisions of Sections 7 and 15 (a) (2) of the Act.

VII.

(a) During the period beginning on or about October 24, 1938, and continuously to the date hereof, the co-partner defendants have shipped, delivered, and sold to the corporation defendant, with knowledge that shipment, delivery and sale thereof in interstate commerce from

points within the State of Florida to, into, and through other states was intended by the said corporation defendant, goods produced in their said plant at Jacksonville, Florida, in the production of which many of their employees were employed in violation of Sections 6 and 7 of the Act, as alleged in paragraphs V and VI hereof. By selling, shipping and delivering the said goods so produced with knowledge that shipment, delivery and sale thereof in interstate commerce as aforesaid was intended, the co-partner defendants have violated and are violating the provisions of Section 15 (a) (1) of the Act.

(b) During the period beginning on or about October 24, 1938, and continuously to the date hereof the corporation defendant has sold, shipped, delivered, transported and offered for transportation in interstate commerce from its main office and warehouse in Jacksonville, Florida, and from its Tallahassee, Pensacola, and Jacksonville branches to, into, and through States other than the State of Florida, substantial quantities of the goods purchased by it from the co-partner defendants which goods had been produced by them in violation of Sections 6 and 7 of the Act, as alleged herein. By selling, shipping, delivering, transporting, and offering for transportation in interstate commerce, as aforesaid, the said goods so produced, the corporation defendant has violated and is violating the provision of Section 15 (a) (1) of the Act.

VIII.

On October 21, 1938, the Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to the authority conferred upon him by Section 11 (c) of the Act, duly issued and promulgated regulations prescribing the records of persons employed and of wages, hours and other conditions and practices of employment to be made, kept and preserved by every employer subject to any provision of the Act. The said regulations, and amendments thereto, were published in the Federal Register and are known as Title 29, Chapter V,

Code of Federal Regulations, Part 516. A copy of the said regulations, as amended, is attached hereto, made a part hereof, and marked "Exhibit A".

IX.

During the period beginning October 24, 1938, and continuously to the date hereof the said co-partner and corporation defendants, being employers subject to the provisions of the Act and to the regulations referred to in Paragraph VIII, supra, have severally failed and refused to make, keep and preserve records of the respective persons employed by them and of the wages, hours and other conditions and practices of employment respectively maintained by them as prescribed by the said regulations, in that the records made, kept and preserved by each of said defendants fail accurately to show, among other things, the hours worked each workday and each workweek by many of their respective employees. During said period said defendants, severally, have made and recorded, or caused to be made and recorded in their respective records, entries concerning hours worked by their respective employees, which entries do not adequately comply with the requirements of the Act and of said regulations. By failing and refusing to make, keep and preserve records as prescribed by the said regulations said defendants, severally, have violated and are violating the provisions of Sections 11 (e) and 15 (a) (5) of the Act.

X.

The goods produced and distributed by said co-partner and corporation defendants in and through their respective plants, branches and places of business compete with similar goods produced and distributed in other states, and defendants in their said businesses severally compete with manufacturers and distributors of paper, paper products, brooms, mops, coat hangers and other similar products, located in other states. The payment by said defendants severally of wages below the minimum rates established by Section 6 of the Act, as alleged in para-

graph V hereof, and the employment of workers for work-weeks in excess of the number of hours specified in Section 7 of the Act without compensating them for such excess hours at rates not less than one and one-half times the regular rates at which they are employed, as alleged in paragraph VI hereof, has enabled and does enable said defendants severally to secure an unfair competitive advantage over firms producing and distributing similar goods in other States, and has enabled and does enable defendants severally to undersell many competitors in other States who maintain labor standards at and above the minima prescribed by the Act, and to divert business from them.

XI.

Defendants have severally since the effective date thereof continuously violated the aforesaid provisions of the Act and severally threaten and intend to continue to violate the said provisions unless enjoined and restrained by a judgment of this Court.

XII.

A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

WHEREFORE, plaintiff demands judgment severally and separately enjoining and restraining defendants, their respective officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in their behalf and interest, from violating the provisions of Sections 15 (a) (1), 15 (a) (2) and 15 (a) (5) of the Act, both permanently and during the pendency of this action, and such other and further relief as may be necessary and appropriate.

/s/ GEORGE A. McNULTY
General Counsel

/s/ IRVING J. LEVY
Assistant General Counsel

/s/ GEORGE A. DOWNING
Acting Regional Attorney

/s/ RICHARD E. COTTON
Associate Attorney

/s/ CHARLES N. SPITZ
Associate Attorney
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Atlanta, Georgia

or

c/o Wage and Hour Division
U. S. Department of Labor
Washington, D. C.

Title 29, Chapter V

Code of Federal Regulations

Part 516

REGULATIONS ON

RECORDS TO BE KEPT BY EMPLOYERS

PURSUANT TO SECTION 11(c) OF THE FAIR

LABOR STANDARDS ACT OF 1938

(52 STAT. 1060)

**AND EXPLANATION
OF THE RECORDS REGULATIONS
OCTOBER 1939**

SEE ALSO "EMPLOYERS' DIGEST", Sections 14 to 30
inclusive and Sample Payroll Form

**UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION**

Part 516—

**REGULATIONS ON
RECORDS TO BE KEPT BY EMPLOYERS
PURSUANT TO SECTION 11 (c) OF
THE FAIR LABOR STANDARDS ACT¹**

SECTION 516.1—RECORDS REQUIRED. Every employer subject to any provisions of the Fair Labor Standards Act or any order issued under this Act shall make and preserve records containing the following information with respect to each person employed by him, with the exceptions of those specified in sections 13 (a) (3), 13 (a) 4, 13 (a) (5), 13 (a) (6), 13 (a) (8), 13 (a) (9), and 13 (a) (10) of the Act:

- (a) Name in full.
- (b) Home address.
- (c) Date of birth if under 19.*
- (d) Hours worked each workday and each workweek.
- (e) Regular rate of pay and basis upon which wages are paid.²
- (f) Wages at regular rate of of pay for each workweek, excluding extra compensation attributable to the excess of the overtime rate over the regular rate.²
- (g) Extra wages for each workweek attributable to the excess of the overtime rate over the regular rate.²

¹Issued under the authority contained in section 11 (c), 52 Stat. 1060.

²These three items of information are only required when overtime is worked by the employee.

(h) Additions to cash wages at cost, or deductions from stipulated wages in the amount deducted or at the cost of the item for which deduction is made, whichever is less.³

(i) Total wages paid for each workweek.

(j) Date of payment.

Provided, however, That with respect to employees specified in section 13 (b) of the Act, records referred to in paragraphs (f) and (g) of this section shall not be required; and

Provided further, That with respect to employees who are specified in section 13 (a) (2) of the Act and employees who are defined in regulations of the Wage and Hour Division: Part 541—(Regulations defining and delimiting the terms "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman" pursuant to sec. 13 (a) (1) of the Fair Labor Standards Act)—employers need make and preserve records containing the following information only:

(a) Name in full.

(b) Home address.

(c) Occupations.

Provided further, That with respect⁹ to employees employed or purported to be employed by an employer in

³This information is required only where the cash wage actually paid is less than the minimum wage required by the Act. The reasonable cost of board, lodging, and other facilities as part of wages, is defined and delimited by regulations of the Wage and Hour Division: Part 531—(Regulations determining the reasonable cost of board, lodging, and other facilities pursuant to Sec. 3 (m) of the Fair Labor Standards Act). This matter is dealt with further in Interpretative Bulletin No. 3 of the Wage and Hour Division.

As corrected by a notice approved by the Acting Administrator on November 9, 1939, and published in the Federal Register November 10, 1939.

pursuance of the provisions of section 7 (b) (1) or section 7 (b) (2) of the Fair Labor Standards Act, employers shall comply with each of the following additional requirements:

(a) Keep and preserve a copy of each collective bargaining agreement which entitles or purports to entitle an employer to employ any of his employees in pursuance of the provisions of section 7 (b) (1) or section 7 (b) (2) of the Fair Labor Standards Act.

(b) Report and file with the Administrator at Washington, D. C., within thirty days after such collective bargaining agreement has been made, a copy of each such collective bargaining agreement. Likewise, a copy of each amendment or addition thereto shall be reported and filed with the Administrator at Washington, D. C., within thirty days after such amendment or addition has been agreed upon. If any such collective bargaining agreement, or amendment, or addition thereto, was made prior to the 25th day of April, 1939, a copy thereof shall be reported and filed with the Administrator at Washington, D. C., on or before the 26th day of May, 1939. The reporting and filing of any collective bargaining agreement or amendment or addition thereto shall not be construed to mean that such collective bargaining agreement or amendment or addition thereto is a collective bargaining agreement within the meaning of the provisions of Section 7 (b) (1) or Section 7 (b) (2).

(c) Make and preserve a record designating each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

Provided further,⁴ That with respect to employees employed in occupations in the performance of which the employee receives tips or gratuities from third persons which are accounted for or turned over by the employee to the employer, additional records containing the following information with respect to each such employee shall be made and preserved by the employer:

(a) Total hours worked each workweek in occupations in the performance of which the employee receives tips or gratuities from third persons.

(b) Total hours worked each workweek in any other occupation.

(c) Wages paid each workweek for hours worked under (a) above; provided, however, that if the employer claims as "wages paid" the amount of any gratuities or tips voluntarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded.

(d) Wages paid each workweek for hours worked under (b) above; provided, however, that if the employer claims as "wages paid" the amount of any gratuities or tips voluntarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded.

(This section, as amended, approved by the Administrator October 13, 1939, and published in the Federal Register October 14, 1939.)

⁴Whether a contract requiring employees to account for tips is legal is a question for the courts to decide. The Wage and Hour Division is not taking a position on this question but is requiring records that will protect both employer and employee whatever the ultimate judicial decision on the validity of such contract may be.

SECTION 516.2—Form of Records:

No particular order or form is prescribed for these records, provided that the information required in section 516.1 is easily obtainable for inspection purposes.

SECTION 516.3—Place and period for keeping records.

Each employer shall keep the records required by these regulations for his employees within each State either at the place or places of employment or, where that is impracticable, in or about at least one of his places of business within such State, unless otherwise authorized by the Administrator. Such records shall be kept safe and readily accessible for a period of at least 4 years after the entry of the record, and such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representative at any time.

SECTION 516.4—Definitions of terms used in these regulations.

(a) **Act.**—The "Act" means the Fair Labor Standards Act of 1938.

(b) **Hours worked.**—For the purpose of these regulations the term "hours worked" shall include all time during which an employee is required by his employer to be on duty or to be on the employer's premises or to be at a prescribed workplace,

(c) **Workday and workweek.**—For the purposes of these regulations, a "workday" with respect to any employee shall be any 24 consecutive hours, and a "workweek" with respect to any employee shall be 7 consecutive days, provided that the workday or workweek is not changed for the purpose of evasion of provisions of the Act or any regulations prescribed pursuant thereto.

(d) **Wage or wages.**—For the purposes of these regulations, the term “wage” or “wages” means all remuneration for employment of whatsoever nature whether paid on time work, piece work, salary, commission, bonus, or other basis.

(e) **Employee.**—The term “employee” is defined by the Act (sec. 3 (e)) to include “any individual employed by an employer,” and the term “employ” is defined by the Act (sec. 3 (g)) to include “to suffer or permit to work.” It shall be the duty of each employer to make and preserve all records required under these regulations with respect to each employee employed by him, whether or not such employees perform their work in an establishment or plant operated by the employer or subject to his immediate supervision. Thus, the required records shall be made and preserved by the employer for “industrial home workers” or other employees who produce goods for the employer from material furnished by home or who are compensated for such employment at piece rates, wherever such employees actually perform their work.

(f) **Regular rate of pay.**—For the purpose of these regulations, the term “regular rate of pay” means—

(i) With respect to an employee paid solely on an hourly basis (i. e., receiving no additional wage whatever): the hourly wage rate at which he is employed.

(ii) With respect to an employee employed on a daily, weekly, semimonthly,⁵ or monthly⁵ basis for a regular number of hours per week determined by

⁵With respect to an employee paid on a monthly basis, the wages earned during a workweek are computed by multiplying the monthly wage by 12 and dividing the result by 52. With respect to an employee paid on a semimonthly basis, the wages earned during a workweek are computed by multiplying the semimonthly wage by 24 and dividing the result by 52.

agreement or custom: the average hourly rate⁶ obtained by dividing the wages⁷ earned for that regular number of hours in the workweek by that regular number of hours; and

(iii) With respect to an employee paid on any other basis than those specified in (i) and (ii) of this Paragraph (f): the average hourly rate⁶ obtained by dividing the wages⁷ earned for the particular workweek by the total number of hours worked during that workweek.

SECTION 516.5.—Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations on records to be kept by employers (secs. 516.1 through 516.4) may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If upon inspection of the petition the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provisions for affording interested parties an opportunity to present their views, both in support and in opposition to the proposed changes.

(The foregoing sections, except as noted, approved by the Administrator October 21, 1938 and published in the

⁶In computing the average hourly rate fractions of less than one-half cent may be disregarded, and fractions over one-half cent should be raised to the next full cent.

⁷In computing the average hourly rate all wages earned or paid during a particular workweek must be included except

- (a) Bonuses not computed on the basis of measured work performed (e. g., bonuses for punctuality, simple Christmas bonuses, etc.)
- (b) Extra compensation attributable to the excess of the overtime rate over the regular rate, and
- (c) Additions to the cash wage for board, lodging or other facilities furnished by the employer.

Federal Register October 22, 1938.)

Section 516.90 REGULATIONS ON RECORDS TO BE KEPT BY EMPLOYERS OF INDUSTRIAL HOME WORKERS, PURSUANT TO SECTION 11 (c) OF THE FAIR LABOR STANDARDS ACT.—Every employer subject to any provisions of the Fair Labor Standards Act or any order issued under this Act who directly or indirectly distributes work to be performed by an industrial home worker shall be relieved of the provisions for record-keeping contained in Sections 516.1, 516.2, 516.3, and 516.4 (b), of these Regulations with respect to such industrial home worker and shall, in lieu of such requirements, make and preserve, records containing the following information with respect to each such industrial home worker engaged on work distributed directly by such employer or indirectly in his interest:

- (a) Name in full.
- (b) Home address.
- (c) Date of birth if under 19.
- (d) With respect to each lot of work issued
 - (1) Date and hour on which work is given out to worker, and amount of such given.
 - (2) Date and hour on which work is returned by worker, and amount of such work returned.
 - (3) Kind of articles worked on and operations performed.
 - (4) Piece rates paid.
 - (5) Hours worked on each lot of work returned.

- (6) Wages paid for each lot of work returned.
- (7) Deductions for Social Security taxes.
- (8) Date of payment.
- (e) With respect to each week:
 - (1) Hours worked each week.
 - (2) Wages earned each week at regular piece rates.
 - (3) Extra pay each week for overtime.
 - (4) Total wages earned each week.
 - (5) Deductions for Social Security taxes.
- (f) Name and address of each agent, distributor, or contractor through whom home work is distributed.

In addition to the keeping of the above records, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by him to each worker) shall be kept for each industrial home worker, and the information required therein shall be entered by the employer or the person distributing home work on behalf of such employer each time work is given out to or received from an industrial home worker.

Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the industrial home worker until such time as the Wage and Hour Division may request it.

A separate record and a separate handbook must be kept for each individual performing work in or about a home on any lot or amount of home work distributed.

For the purpose of this section, the term "Industrial Home Worker" means any person producing in or about a home, for an employer, goods from material furnished directly by or indirectly for such employer.

This section shall be in force and effect until repealed or modified by the Administrator.

(This section, as amended, approved by the Administrator September 23, 1939 and published in the Federal Register September 26, 1939.)

For release
Tuesday, February 27, 1940.

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

TITLE 29—LABOR

PART 516

REGULATIONS ON RECORD TO BE KEPT BY
EMPLOYERS PURSUANT TO SECTION 11 (c)
OF THE FAIR LABOR STANDARDS ACT

The following amendment to Regulations, Part 516 (Regulations on Records to be Kept by Employers Pursuant to Section 11(c) of the Fair Labor Standards Act of 1938) is hereby issued. This amendment amends Section 516.3 of said regulations (Place and Period for Keeping Records) and shall become effective upon my signing the original and publication thereof in the Federal Register and shall be in force and effect until repealed or modified by regulations thereafter made and published.

Signed at Washington, D. C., this 20th day of February, 1940.

Harold D. Jacobs, Administrator
Wage and Hour Division
U. S. Department of Labor

SECTION 516.3 — Place and Period For Keeping Records.

(a) Each employer shall keep the records required by Section 516.1 at the place or places of employment, or at one or more established central record keeping offices where such records are customarily maintained. Where such records are maintained at a central record keeping office, other than at the place or places of employment, the employer, in addition to the records required by Section 516.1, shall maintain a record for each employee of the total wages paid and total hours worked each work-week at the place or places of employment.

(b) All records required by Section 516.1 shall be kept safe and readily accessible for a period of at least four years after the entry of the record, and such additional records as are required by subsection (a) hereof shall be kept safe and readily accessible for a period of at least two years after the entry of the record. All such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representative at any time. Where the records required by Section 516.1 are maintained at a central record keeping office, other than at the place or places of employment, such records shall be made available at the place or places of employment without delay upon reasonable advance notice from the Administrator or his duly authorized and designated representative.*

*(This Section 516.3 as amended, issued under the authority contained in Section 11 (c), 52 Stat. 1060.)

**DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE SECTION**

Edwin R. Williams, Clerk.
Filed Dec. 30, 1940

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

CLIFFORD G. McGEHEE, M. R.
McGEHEE, and CLYDE C.
McGEHEE, co-partners doing busi-
ness as SOUTHERN INDUS-
TRIES; and JACKSONVILLE PA-
PER COMPANY, a corporation
organized and existing under the
laws of the State of Florida,

Defendant.

Civil Action
File No. 209-J

ANSWER OF JACKSONVILLE PAPER COMPANY, DEFENDANT.

Comes now the defendant Jacksonville Paper Company, corporation, and for answer to the complaint herein says:

1. The complaint fails to state a claim against this defendant upon which relief can be granted.

2. Answering paragraph III of said complaint this defendant denies that at the time alleged it was and now is engaged in interstate commerce, as alleged, and says that its business is partly in interstate commerce but the greater portion of its business is intrastate, as hereinafter more particularly alleged.

This defendant further denies that practically all of its corporate stock is owned by the so-called co-partner defendants and denies that the co-partners composing the co-partnership of Southern Industries Company are the managing officers of the corporate defendant.

Further answering said paragraph this defendant admits that it purchases all of the goods produced by Southern Industries Company and says that the goods so purchased by it are sold in both intrastate and interstate commerce but that approximately 74% of said goods are sold, delivered and consumed in the State of Florida and only 26% approximately of said goods are sold or delivered to customers outside of the State of Florida.

3. Answering paragraph IV (b) of said complaint this defendant admits that it conducts its business at the point alleged and admits that it has in its employ approximately 180 employees but denies that practically all of the operations performed by said employees are concerned with goods handled, moved or shipped in interstate commerce and which are an essential part of the streams of interstate commerce and says that many of its employees are engaged in commerce and the production of goods for commerce only in the States of Florida, Georgia and Alabama respectfully and are not subject to the provisions of the Act.

4. Answering paragraph V of said complaint this defendant says that at the time of the filing of the complaint herein and for a long time prior thereto this defendant paid and now pays all of its employees engaged in interstate commerce or in the production of goods for interstate commerce within the meaning of said Act not less than the minimum wages prescribed by said Act and that it has paid and now pays to many of its employees a great deal more than the minimum wages so prescribed.

5. And further answering said paragraph V of said complaint this defendant says that the business conducted by its branches at Orlando, Lakeland, Tampa, St. Petersburg, Miami and West Palm Beach, Florida, and Macon, Georgia, is solely and only intrastate business, said branches selling paper and merchandise at wholesale to merchants and consumers in the state in which said branches are located, for use within said respective states,

and that the merchandise so sold by said branches is not transported by the purchasers thereof beyond the limits of the state in which said branches are located; that all of the merchandise so sold by said several branches is received by them either from the stock of goods carried by the defendant at its warehouse in Jacksonville, Florida, or is shipped direct said branches from the manufacturers thereof. That the merchandise so received by said branches is placed in the warehouse at said branches for use as occasion requires and when sales are made by said branches the goods so received are taken out of the warehouse stock and delivered to the purchasers thereof within the state for use and consumption within the state, as hereinabove alleged.

6. This defendant moves to dismiss said paragraph V of the bill of complaint insofar as the same relates to paragraphs (b)-(1), (b)-(2), (b)-(3), (b)-(4), (b)-(9), (b)-(12), and (b)-(13) of the bill of particulars on the following grounds.

(a) It affirmatively appears from the bill of particulars filed in said cause that the allegations of said paragraph V of the complaint as applied to said paragraphs of the bill of particulars severally presents a moot question.

(b) It affirmatively appears that the allegations of said paragraph V of the complaint as applied to said paragraphs of the bill of particulars are irrelevant and immaterial.

(c) It does not appear that there was any violation of the Act at the time of the filing of the complaint herein or immediately prior thereto nor that any violation of the Act was threatened, and on the contrary it appears from the bill of particulars filed herein that the last alleged violation occurred long prior to the filing of the bill of complaint herein.

7. Answering paragraph VI of said complaint this defendant denies the allegations thereof. And further answering said paragraph this defendant says that long prior to the filing of the bill of complaint in this cause this defendant put into effect a schedule of pay by which all of its employees engaged in commerce or in the production of goods for commerce within the meaning of the Act are paid not less than the minimum wage prescribed by said Act and are paid time and a half of said minimum wage for all hours of work in excess of the maximum hours prescribed by the Act. Said scale of wages was in effect at the time of the filing of the bill of complaint herein and has been kept in full force and effect.

8. Answering paragraph VII (b) of said complaint this defendant denies the allegations thereof.

9. Answering paragraphs VIII and IX of said complaint this defendant denies that at the time of the filing of the bill of complaint herein and prior thereto this defendant failed and refused to make, keep, and preserve records in compliance with the regulations from time to time promulgated by the Administrator and says that the records made, kept, and preserved by it adequately comply with the requirements of the Act and of the regulations issued in pursuance thereof, and that said records adequately contain the information required by said regulations.

This defendant hereby requests a jury trial in said cause.

RAGLAND, KURZ & LAYTON;

By /s/ L. KURZ,

608 Consolidated Building,
Jacksonville, Florida

Attorneys for Jacksonville Paper
Company, Defendant.

Copy of the foregoing answer received this — day
of December, A. D., 1940.

Charles H. Spitz, Associate Attorney.

DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Edwin R. Williams, Clerk.
Filed Dec. 30, 1940

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

CLIFFORD G. McGEHEE, M. R.
McGEHEE, and CLYDE C.
McGEHEE, co-partners doing busi-
ness as SOUTHERN INDUS-
TRIES; and JACKSONVILLE PA-
PER COMPANY, a corporation
organized and existing under the
laws of the State of Florida,

Defendant.

Civil Action
File No. 209-J

ANSWER OF CLIFFORD G. McGEHEE,

H. R. McGEHEE and CLYDE C. McGEHEE.

Come now the defendants, Clifford G. McGehee, M. R. McGehee and Clyde C. McGehee, sued herein as co-partners doing business as Southern Industries, and for answer to the complaint herein filed, say:

1. The complaint fails to state a claim against these defendants upon which relief can be granted.
2. Answering paragraph III of the complaint these

defendants deny that they now are or at the time of the filing of the complaint herein were partners doing business under the firm name and style of Southern Industries and deny that they now are or at the time of the filing of the complaint herein were the sole owners and operators of the manufacturing plant mentioned in paragraph III of the complaint and say that the correct name of said partnership is Southern Industries Company and that said co-partnership is composed of Delia Crawford McGehee, Ray Sutton McGehee and the defendant C. C. McGehee and of M. R. McGehee and Ray Sutton McGehee, as Trustees respectively for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee and Berrylin Ray McGehee.

Further answering said paragraph these defendants admit that Southern Industries Company is engaged in the manufacture of paper products, brooms, mops and other products in the manner hereinafter set forth but deny that said Southern Industries Company or its employees are engaged in interstate commerce or in the production of goods for interstate commerce, for the reasons hereinafter set forth in paragraph 3 hereof.

3. Answering paragraph IV (a) of the complaint these defendants admit that said Southern Industries Company employs approximately 105 employees but deny that said Southern Industries Company or the employees named in the bill of particulars filed herein were at the time of the filing of the bill of complaint herein or now engaged in interstate commerce or in the production of goods in interstate commerce and say that said Southern Industries Company is engaged solely in the manufacture of paper bags, envelopes and other paper products, coat hangers, brooms and other like articles; that it sells said articles solely and only to Jacksonville Paper Company; that said Jacksonville Paper Company delivers to said Southern Industries Company at the plant of Southern Industries Company in the City of Jacksonville, Florida the raw materials used in the manufacture

of said articles, said raw materials being purchased from the suppliers thereof by Jacksonville Paper Company and delivered to said Jacksonville Paper Company at Jacksonville, Florida, that Jacksonville Paper Company thereupon, as and when manufactured articles are needed delivers to Southern Industries Company at its plant in Jacksonville, Florida, as aforesaid, raw materials to be used in the manufacture of such articles from time to time and Southern Industries Company thereupon processes and manufactures said articles and delivers the manufactured products to Jacksonville Paper Company at the plant of Southern Industries Company in the City of Jacksonville, Florida. That approximately 74% in value of the goods so manufactured by Southern Industries Company are thereafter sold by Jacksonville Paper Company through its various places of business in Jacksonville and other points in the State of Florida, an approximately 26% in value of articles manufactured by Southern Industries Company are thereafter sold by Jacksonville Paper Company through its various branches to customers residing outside of the State of Florida, but that it is not known to Southern Industries Company nor to Jacksonville Paper Company at the time of the placing of orders for the manufacture of such articles or at the time of the delivery of manufactured articles in what manner or where said articles will be sold and said Southern Industries Company does not itself, or through its agents or employees, make any shipments or deliveries to points outside of the State of Florida but receives all materials entering into the manufacture of its products at its plant in Jacksonville, Florida from the warehouse or storeroom of Jacksonville Paper Company in Jacksonville, Florida, and delivers all of its manufactured products at its plant in the City of Jacksonville, Florida to Jacksonville Paper Company.

4. Answering paragraph V of said complaint these defendants say that at the time of the effective date of the Fair Labor Standards Act and for a limited time thereafter these defendants paid to certain of their em-

ployees who were apprentices or incapacitated through age or otherwise and hence unable to render service as efficiently as ordinary employees, wages at the rate of 20 cents per hour during the period of apprenticeship or incapacity but say that said practice had been discontinued long prior to the filing of the bill of complaint herein. That effective December 2, 1938, said Southern Industries Company paid to all of its employees other than those hereinabove referred to a minimum wage of 25 cents per hour to October 24, 1939, and thereafter and now pays a minimum wage of 50 cents per hour to said employees and at the same time said Southern Industries Company put into effect a 44-hour work week for the period ending October 23, 1939; a 42-hour work week for the period ending October 23, 1940, and now has in effect a 40-hour work week. And these defendants deny that said Southern Industries Company has failed to pay its employees the minimum wages required to be paid by said Act continuously to the date of the filing of the complaint herein and say that long prior to the filing of said complaint said Southern Industries Company has paid and now pays wages equal to or exceeding the minimum wages prescribed by said Act.

5. Further answering said paragraph of said bill of complaint these defendants move to strike said paragraph V of the complaint on the following grounds:

(a) It appears from the allegations of said paragraph that the same presents a moot question.

(b) No facts are alleged to show any existing or threatened violation of the provisions of the Act.

(c) It appears from the bill of particulars filed herein and constituting a part of said paragraph that the last violation therein alleged occurred on August 10, 1939, whereas the complaint herein was not filed until July 6, 1940.

6. Answering paragraph VI of the complaint herein these defendants deny that the said Southern Industries Company or the employees named in the bill of particulars filed herein were at the time of the filing of the complaint herein or now engaged in interstate commerce or the production of goods for interstate commerce and re-aver and make a part hereof the allegations of paragraph 3 of this answer.

7. Further answering said paragraph VI these defendants deny that at the time of the filing of the complaint herein or prior thereto said Southern Industries Company failed to compensate its employees for overtime as provided in said act, and deny that said Southern Industries Company has failed and refused to compensate its employees for overtime as provided in the Act, and say that on, to-wit, the 2nd day of December, 1938, said Southern Industries Company put into effect a minimum scale of wages of 25 cents per hour up to and including October 23, 1939, and of 30 cents per hour thereafter, with a maximum time of employment of 44 hours during any one work week for the period ending October 23, 1939; a 42-hour work week for the period ending October 23, 1940, and now has in effect a 40-hour work week. That said schedule of pay and hours of work have been followed and adhered to by said Southern Industries Company long prior to the filing of the bill of complaint herein.

8. Further answering said paragraph of said bill of complaint these defendants move to strike said paragraph VI on the following grounds:

(a) It appears from the allegations of said paragraph that the same presents a moot question.

(b) No facts are alleged to show any existing or threatened violation of the provisions of the Act.

(c) It appears from the bill of particulars filed herein that the last violations alleged to have occurred is al-

leged to have occurred on April 25, 1940, whereas the bill of complaint herein was not filed until July 6, 1940.

9. Answering paragraph VII of said complaint these defendants deny that said Southern Industries Company and its employees are engaged in commerce or the production of goods for commerce within the meaning of said Act and re-aver the allegations of paragraph 3 hereof insofar as the same relate to the method of doing business by the said Southern Industries Company and these defendants deny that they have violated or are violating the provisions of Section 15 (a) (1) of said Act. These defendants further deny that the defendant Jacksonville Paper Company at the time of the filing of said bill of complaint was violating the provisions of Sections 6 and 7 of the Act, as alleged in paragraphs V and VI of the complaint.

10. Answering paragraphs VIII, and IX of said complaint these defendants deny that at the time of the filing of the bill of complaint and prior thereto said Southern Industries Company failed and refused to make and keep and preserve records as prescribed by the Administrator and say that from the effective date of the Act said Southern Industries Company did keep records in compliance with the regulations from time to time promulgated by the Administrators and that on the first day of January, 1940, long prior to the filing of the bill of complaint, the said Southern Industries Company did install a time clock and did require all of its workers and employees to utilize said time clock, and that the records kept by said Southern Industries Company since January 1, 1940, are full, accurate, and complete and adequately comply with the requirements of the Act and of said regulations.

11. Answering paragraphs X, XI, and XII of said bill of complaint, these defendants deny the allegations thereof.

These defendants hereby request a jury trial in said cause.

RAGLAND, KURZ & LAYTON,
By /s/ **L. GURZ,**
608 Consolidated Building,
Jacksonville, Florida.

Attorneys for C. G. McGehee, M. R.
McGehee, and Clyde C. McGehee.

Copy of the foregoing answer received this — day of
December, A. D. 1940.

Charles H. Spitz, Associate Attorney.
On March 25th, 1941, it was stipulated between counsel
for the respective parties, as follows:

"It is further stipulated that the answer filed by
Clifford G. McGehee, M. R. McGehee, and C. C. Mc-
Gehee, sued as co-partners doing business as Southern
Industries, may stand as and for the answer of the
co-partner defendants as named in the amendment
to said complaint, and as the answer of the defendant
C. G. McGehee."

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

Filed Mar. 25, 1941
Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

CLIFFORD G. McGEHEE et al,
co-partners doing business as
SOUTHERN INDUSTRIES, and
JACKSONVILLE PAPER COMPANY,
a corporation,

Defendants.

Civil Action
File No. 209-J

AMENDMENT TO COMPLAINT

COMES NOW the plaintiff by his undersigned attorneys and with the consent of defendants, as expressed in the stipulation filed herein on March 25, 1941' files the following amendment to his complaint:

I.

The complaint is amended as to parties defendants as follows:

"Jacksonville Paper Company, a corporation organized and existing under the laws of the State of Florida; Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company and Clifford G. McGehee, defendants."

II.

Paragraph III of said complaint is amended so as to read as follows:

"The defendant, Jacksonville Paper Company, is and at all times hereinafter mentioned was, a corporation organized under and existing by virtue of the laws of the State of Florida, having its principal office and place of business at 808 West Bay Street, Jacksonville, Florida, within the jurisdiction of this Court, and is, and at all times hereinafter mentioned was, engaged at its said place of business in the said City of Jacksonville and in its various branches as alleged in paragraph IV, infra, in the purchase, sale, distribution and delivery, at wholesale, of paper, paper products, brooms, mops, coat hangers, and other similar products in interstate commerce. It is hereinafter referred to as the corporation defendant.

"Defendants Delia Crawford McGehee, Ray Sutton, McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGee, as Trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, reside in the City of Jacksonville, Duval County, Florida, within the jurisdiction of this Court. Said defendants are co-partners doing business under the firm name and style of Southern Industries Company, and are and at all times hereinafter mentioned were the sole owners and operators of a place of business and manufacturing plant, located at Twenty-third Street and Evergreen Avenue in the said City of Jacksonville, Florida, where they are engaged in the production, sale and distribution of paper, paper products, brooms, mops, coat hangers, and other similar products. They are hereinafter referred to as the co-partner defendants.

"The defendant Clifford C. McGehee resides within the City of Jacksonville, Duval County, Florida, within the jurisdiction of this Court. Said defendant at all times hereinafter mentioned was the president of the corporation defendant and was its chief executive officer and the active manager of its business. Said defendant was also at all times hereinafter mentioned in active charge

and management of the business conducted by the firm known as Southern Industries Company. At all times hereinafter mentioned said defendant acted directly or indirectly in the interest of the said corporation defendant and of the co-partner defendants in relation to their respective employees.

"All, or substantially all, of the corporate stock of the corporation defendant is owned by the co-partner defendants and by the defendant Clifford G. McGehee; and the said Clifford G. McGehee is, as above alleged, the managing officer of the corporation defendant and the manager of the business conducted by Southern Industries Company. All, or substantially all, of the goods produced by the co-partner defendants are sold and disposed of to the corporation defendant, which in turn distributes a substantial portion of such goods in interstate commerce, as alleged in paragraphs IV and VII, *infra*. In addition, the corporation defendant purchases from other concerns located in States other than the State of Florida substantial quantities of similar products which it in turn sells, distributes and delivers in interstate commerce, as herein alleged."

(s) GERARD D. REILLY
Solicitor

Post Office Address:
c/c Wage and Hour Division
United State Department of Labor
456 New Post Office Building
Jacksonville, Florida

—or—

(s) IRVING J. LEVY
Assitant Solicitor
In Charge of Litigation

—or—

c/c Wage and Hour Division
 United State Department of Labor
 Witt Building, 249 Peachtree St.
 Atlanta, Georgia.

(s) GEORGE A. DOWNING
 Regional Attorney

—or—

(s) CHARLES H. SPITZ
 Associate Attorney

c/c Wage and Hour Division
 United States Department of Labor
 Washington, D. C.

Wage and Hour Division
 United States Department of Labor
 Attorney for Plaintiff.

UNITED STATES DISTRICT COURT,
 SOUTHERN DISTRICT OF FLORIDA,
 JACKSONVILLE DIVISION.

Filed Apr. 15, 1941
 Edwin R. Williams, Clerk

PHILIP B. McGEHEE,
 ADMINSTRATOR OF THE WAGE
 AND HOUR DIVISION,
 UNITED STATES DEPARTMENT
 OF LABOR,

Plaintiff,

v.

CLIFFORD G. McGEHEE, et al., co-
 partners doing business as
 SOUTHERN INDUSTRIES; and
 JACKSONVILLE PAPER COM-
 PANY, a corporation organized and
 existing under the Laws of the State
 of Florida,

Defendants.

No. 209 J, Civil

ORDER.

All affected parties having been heard, after due notice, upon the matters hereinafter mentioned, upon consideration thereof, it is—

CONSIDERED AND ORDERED:

1. Plaintiff's motion (filed April 4, 1941) for leave to file and amended and supplemental bill of particulars, is granted.

2. Defendant's request for a jury trial herein is denied, as the action is an equitable one, seeking only an injunction against further violation of the Fair Labor Standards Act of 1938.

3. Pursuant to a pre-trial conference this day held the following matters may be taken as established by admission of the parties, and no further proof thereof shall be necessary:

(a) That defendant Jacksonville Paper Company since October, 1938 has been continuously engaged in interstate commerce, and is subject to the Fair Labor Standards Act, at its principal office and warehouse at Jacksonville, Florida, and at its following branches: Florida Paper Company, Jacksonville, Florida; Capitol Paper Company, Tallahassee, Florida; Pensacola Paper Company, Pensacola, Florida; Partin Paper Company, Mobile, Alabama; Atlantic Paper Company, Savannah, Georgia.

(b) Prior to the date of the trial hereof, the defendants will examine the bill of particulars, as amended, and will supply the plaintiff with a list of the names of the employees of defendant Delia Crawford McGehee, et al, doing business as Southern Industries, and of the defendant Jacksonville Paper Company, whom the defendants admit were engaged in interstate commerce and in the production of goods for commerce, during the periods of time in question, which list when furnished shall become

a part of this admission.

(c) As to the branches located at Orlando, Lakeland, Tampa, St. Petersburg, Miami, West Palm Beach, Florida, and Macon, Georgia, it is admitted that the defendants have not complied with Sections 6, 7, and 11 (c) and 15 (a) (1) of the Act, it being contended by the defendants that the branches are intra-state branches and not covered by the Act.

(d) It is admitted that since October 24, 1938 the defendants comprising the firm of Southern Industries have continuously engaged in the manufacture of goods; that all of said goods are sold and delivered to Jacksonville Paper Company at Jacksonville, Florida at the plant of Southern Industries; that such manufacture is with the knowledge and expectation that after the sale and delivery of such goods to Jacksonville Paper Company a substantial and unsegregated portion of said goods will be sold and shipped to customers and branches of Jacksonville Paper Company outside the State of Florida, but at the time of such delivery to Jacksonville Paper Company it is not known what particular goods or what portion of said goods will be so sold beyond the State.

4. Defendants' objections (filed April 9, 1941) to the interrogatories (filed April 3, 1941) propounded to defendants Delia Crawford McGehee, et al., and to Jacksonville Paper Company, are overruled, and defendants shall answer said interrogatories on or before Friday, April 18, 1941, but in answering said interrogatories defendants may exclude from their answers all matters pertaining to the several branches above named which are conceded to be engaged in interstate commerce and covered by the Act.

DONE AND ORDERED at Jacksonville, Florida.
April 15, 1941.

/s/ LOUIE W. STRUM,
U. S. District Judge.

Copies—Messrs.
 George A. Downing,
 Charles H. Spitz,
 Ragland, Kurz & Layton.

IN THE UNITED STATES DISTRICT COURT,
 IN AND FOR THE SOUTHERN DISTRICT OF
 FLORIDA.

PHILIP B. FLEMING,

Administrator of the Wage and Hour
 Division, United States Department of Labor,
 Plaintiff,
 versus

CLIFFORD G. McGEHEE, et al.,

Co-partners doing business as

SOUTHERN INDUSTRIES and JACKSON-
 VILLE PAPER COMPANY, a corporation.
 Defendants.

TRANSCRIPT OF PROCEEDINGS

Before His Honor, Curtis L. Waller, Judge of the
 above Court, without a Jury, commencing at 2:45
 o'clock p. m., Tuesday, April 22nd, 1941.

APPEARANCES: George A. Downing, Esquire; Charles
 H. Spitz, Esquire; and Abner Brodie,
 Esquire, appearing on behalf of the
 plaintiff.

Rueben Ragland, Esquire, and L.
 Kurz, Esquire, of the law firm of Rag-
 land, Kurz & Layton, appearing on
 behalf of the defendants.

REPORTER:

V. F. HALTER.

THE COURT: Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, plaintiff, versus Clifford G. McGehee; et al. What say you for the plaintiff?

MR. DOWNING: The plaintiff is ready, your Honor.

THE COURT: What say you for the defendant?

MR. KURZ: The defendants are ready.

THE COURT: All right. Will the rule be invoked?

MR. KURZ: If you please, your Honor.

THE COURT: Are the witnesses present so that they may be sworn?

MR. KURZ: There are a great many witnesses, your Honor, and they are not here at this time.

MR. DOWNING: We have agreed, your Honor, that in order not to disrupt the defendants' business, that they may be called as needed by the plaintiff. There are a few of the witnesses outside now.

THE COURT: Those witnesses that are here, let them be brought in and sworn and we can save a little time.

In the meantime, the Court will designate and appoint Mr. V. F. Halter, the official reporter, to especially act as reporter in this case. I think that is necessary in order that he can be paid.

MR. DOWNING: Your Honor, I should like to move for the admission of Mr. Abner Brodie, one of our Wage

and Hour Attorneys, who will participate in the trial of the case.

THE COURT: For this particular case?

MR. DOWNING: Yes, sir.

THE COURT: Very well. You do not mean general admission for general practice, but just form this particular case?

MR. DOWNING: Yes, sir.

THE COURT: He will be so admitted.

... And thereupon such witnesses as were present were sworn as witnesses.

THE COURT: The rule is invoked. The witnesses will go out side of the Court Room and remain outside in the hall.

MR. DOWNING: Your Honor, we have agreed that Mr. C. C. McGehee and Mr. Reinoehl may remain in the Court Room as representatives of the defendantz, and Mr. John R. Thomas, the Wage Hour Inspector, may represent the Division.

THE COURT: Is that agreeable?

MR. KURZ: That is agreeable.

THE COURT: Very well.

MR. DOWNING: Your Honor, certain records have been called for and have brought up here by the defendants, to be produced during the course of the trial. With your Honor's permission, they will be brought in now, into the Court Room.

THE COURT: Very well. I think it would be helpful to the Court if a statement of what counsel purports to prove were made. Point out the facts in the case as if it were before a jury. I find it very helpful in cases with which I have had no official previous connection.

MR. DOWNING: Yes. I am awaiting the production of these records.

THE COURT: I beg pardon?

MR. DOWNING: Shall I await the bringing in of these records before making an opening statement?

THE COURT: Yes, you may wait.

THE COURT: Was there an order on pre-trial conference?

MR. DOWNING: Yes, your Honor, an order entered April 15th, by Judge Strum, contains certain pre-trial admissions.

THE COURT: Now, let us see, Mr. Kurz. What admissions do you make, if any, in regard to the Paper Company, or what have you got to say about Mr. Downing's contention that you admitted that the Paper Company was, itself, engaged in interstate commerce in Jacksonville, Tallahassee, Florida, —?

MR. DOWNING: Pensacola and Mobile.

THE COURT: — Pensacola and Mobile?

MR. KURZ: We admit those branches are engaged in interstate commerce, and it is our contention, that as to those branches, and the employees in those branches, we have complied with all of the provisions of the Act, since at least April, 1940, prior to the filing of the bill.

THE COURT: That includes the Jacksonville Office?

MR. KURZ: That includes the Jacksonville Paper Company, the Florida Paper Company in Jacksonville. They are listed in the pre-trial order. The Branch in Tallahassee, Pensacola, Mobile and Savannah.

THE COURT: Now, then, it is your contention that St. Petersburg —.

MR. KURZ: St. Petersburg, Tampa, Lakeland, Orlando, West Palm Beach and Miami, in Florida, and Macon, Georgia, sell only within the State, and are not engaged in interstate commerce.

THE COURT: All right.

MR. KURZ: And that as to those branches, there has been no effort to keep the records —.

THE COURT: There has been no compliance?

MR. KURZ: No compliance.

MR. DOWNING: Your Honor, I think it is possible to narrow these issues right at this point. Counsel, as I take it, from his statement, concedes that only since April 27, 1940, has the company complied with the Act in the branches, in which interstate commerce has been conceded. If that is true, that will narrow considerably, the evidence to be presented here.

MR. KURZ: Since that time we contend that there has been compliance. Up to that time —.

THE COURT: What was the date of that?

MR. KURZ: April 27th?

MR. DOWNING: 1940.

THE COURT: You contend since April 27, 1940, you have complied in Jacksonville, Pensacola, Savannah, —?

MR. KURZ: Yes, sir.

THE COURT: And the employees come within the Act?

MR. DOWNING: You admit before that date you were not complying with the Act?

THE COURT: The suit was brought when?

MR. KURZ: July 12, 1940.

MR. DOWNING: The inspection was made in January, your Honor, about four months before that date. Early in January. It seems to me, your Honor, that those branches can be lifted entirely from the issues of the case. The violations continued down to April 27, 1940, by admission Coverage is admitted. The injunction would follow, as a matter of course, on those branches. We might as well get them out of the issues.

THE COURT: I fail to see what there is to inquire into as to those branches.

MR. KURZ: I do not think the injunction follows as a matter of course, your Honor. I think there must be a reasonable showing that the violations will continue and the violations must either exist at the time the bill is brought or within a reasonably short time before then or there must be an explanation or showing that there will be a continuance of the violations.

THE COURT: Any rate, I do not care to hear testimony on it under those admissions.

MR. DOWNING: We would like to be heard in reply to Mr. Kurz' contention.

THE COURT: That is a question of law, not evidence.

MR. DOWNING: We are prepared to show continuing violations but it occurred to us the injunction should follow as a matter of course, in view of those admissions, and we could narrow the issues and remove those branches from the issues in the case.

THE COURT: They have already been removed, as far as taking testimony is concerned.

MR. DOWNING: He contends the violation ceased since we filed our complaint, and we are not entitled to our injunction. We have substantial and respectable authority to the contrary.

THE COURT: What you are after is to have the law complied with, rather than obtaining a decree.

MR. DOWNING: Your Honor, there is a long line of cases to the effect that the mere ceasing of violation, after the Government's hand has been placed on the shoulder of the defendant, might recur, once the hand is removed.

THE COURT: That is a legal matter that we can determine at a later time, but I see no occasion for taking testimony now.

MR. DOWNING: The only occasion for taking testimony would be in the event your Honor feels we are not entitled to the injunction in view of the admissions of fact. If it is Your Honor's view, we would like to put in our testimony and show, in fact, violations have continued since that date, so it would not assist us in narrowing the trial of the case. We expect to make as strong a case as we can for the injunction. Unless the injunction will follow as a matter of course, in view of these admissions, we would like to put in our entire case. The inspection started late in December —.

THE COURT: He admits it prior to April 27th, 1940; he admits that he did not comply with the law.

MR. KURZ: Yes, sir.

THE COURT: You say since that time you have complied with it?

MR. KURZ: Yes.

MR. DOWNING: We do not concede that, Your Honor. We think it is immaterial. It is our view that we are entitled to the injunction without reference to showing later violations, but if Your Honor entertains any doubt about that —

MR. DOWNING: If the injunction follows, we are satisfied.

THE COURT: I do not see what you are quarreling over. He admits he is under the Act and he admits he is under its provisions and certainly he has to comply with the Act in the future.

MR. DOWNING: Yes, and the issuance of the injunction would not hurt him any. We do not concede that violation ceased on April 27, 1940, and unless the injunction is to follow, we will want to put in our full case. We will want to make as strong a case as possible for the injunction.

THE COURT: I do not know that the Court is going to take up a lot of time with testimony. That is a moot question. I think you would be entitled to possibly an injunction to enjoin him in the future from failing to comply with it —

MR. DOWNING: That is what we are asking for, your Honor.

The Court: — Because if he admits he is under it, there is nothing here to take up four or five days taking testimony on.

MR. DOWNING: We do not think so, your Honor.

THE COURT: He admits he is under it, and it follows, of course, that he has to comply with it.

MR. KURZ: That is true, but we do not think the plaintiff is entitled to an injunction if, for a long time prior to the filing of the bill, we have complied with it. We would like to submit authorities on that point. In other words, we do not see any necessity for an injunction and the same rule applies in this kind of case as in any other case.

THE COURT: How would any injunction hurt, Mr. Kurz?

MR. KURZ: It is not a matter of whether it hurts, but a matter of whether or not it is necessary.

THE COURT: That is the way it looks to me. If you admits you are under it, you are enjoined by the law from violating it.

MR. KURZ: What is the necessity of an injunction, Your Honor? The law has criminal provisions and other provisions that restrain you from intentionally violating it. We have authority to that effect, that if, prior to the filing of the bill, there has been, — in other words, if at the time the bill for an injunction is filled, there is no reasonable apprehension that the violations will continue, then the injunction is not necessary and will not be granted. If you would like to have argument on that point now, I have some cases I would like to present to the Court. In other words, we do not think an injunction should be granted if there is no reason to apprehend that there are going to be any further violations, and under

the showing,—under the admissions made, certainly there is no showing that there is need to apprehend further violations.

THE COURT: What I will do at the present time is, to hold that I will not hear testimony about Tallahassee, Pensacola, Mobile and Savannah, to show that they are under the Act, when you admit them.

MR. KURZ: Yes, sir. There is no question about that.

THE COURT: That is all I am ruling on right now.

MR. DOWNING: We do not expect to offer any testimony, your Honor, that those branches are under the Act. It may be necessary in proving violations on some of the employees in those branches, to establish that those particular employees are engaged in activities, which are covered by the Act, since there has been no concession or admission that at all of those branches all of the employees in those branches are necessary to defendants' business, it being incumbent upon us to show, particularly, the employee who is testifying or whose deposition is being read, is covered by the Act, because he is engaged in interstate commerce.

THE COURT: When he admits he is under the Act, that is all I have to determine here.

MR. DOWNING: In order to establish a violation on the part of a particular witness, we will have to show that that particular witness is subject to the Act, unless counsel will concede all of the employees in the branch are covered. Then the testimony will be confined to the violations. I agree with counsel in one of his statements in the opening statement, that under the Act, the coverage is determined by the activities of the individuals, the individual employee and to prove a violation as to an individual employee, we have to prove that employee is

subject to the Act, necessarily, in the absence of an admission.

MR. KURZ: Pardon me. I do not think there would be very much difficulty about that, because, for instance, employees engaged in the warehouse or something like that, in the interstate branches, we are not going to ask or insist that testimony be produced to show that he handles these goods. The reason I do not want to make an admission about all employees being covered by the Act, is because some of them may not be. For instance, a stenographer or some employee, who has no direct connection with the interstate business. But I think when Mr. Downing attempts to prove a violation, we, at that time, very readily can concede that this employee is covered. If that is the situation; and that Mr. Downing need not go into a lot of testimony.

THE COURT: Those branches, the question would be involved as to what employees would be engaged in it.

MR. KURZ: I do not think there would be any controversy on that, because we think most of these employees in these branches are within the Act, and unless Mr. Downing's witness is a witness whom we have reason to believe is not covered by the Act, why we expect to admit that he is, and that his formal proof of coverage will not be necessary and the only proof will be as to the violation.

THE COURT: All right. Suppose you submit to me, your authority, when we adjourn, and I will try to look it over between now and tomorrow morning, as to whether you are entitled, as a matter of abstract proposition, to an injunction.

MR. DOWNING: Your Honor, we have a brief, prepared from another case, which is very short; not over seven or eight pages.

THE COURT: All right. Who will you have?

MR. DOWNING: Your Honor, there is one point that

was raised a while ago and which I think we can still narrow the issues. Counsel admits that in the branches on which no coverage is conceded, that there has been a failure to comply with the various sections of the Act alleged in the complaint. It occurs to us that counsel then should concede that we are entitled to the injunction on those branches, providing the evidence establishes coverage to the satisfaction of the Court. Is that concession made?

MR. KURZ: Your Honor, I think I have always said in that event, I do not need to concede anything, because that will be purely a matter of law, which the Court will determine. I just do not want to be placed in the position of making an abstract admission which might come up later on and sort of hurt me.

THE COURT: The question of what employees are under it, is the same proposition. What type or class of employee is under it, if the Branch is under it.

MR. KURZ: I think, perhaps, Mr. Downing, if there is coverage, the admission in the pre-trial conference shows that there were some employees in each of the branches that were covered.

MR. DOWNING: I am suggesting that we remove from the issues as to those branches, any question as to our right to the injunction, provided we establish coverage, since the defendant admits that they have not complied with the Act in any of them.

THE COURT: I think that would follow under that admission.

MR. KURZ: I think it would follow under that admission.

The COURT: Yes, I think it would follow under that admission. Are you ready to proceed with the testimony?

MR. DOWNING: Yes, your Honor. A subpoena duces tecum was issued in this case. Some of the items were

ordered produced by Judge Strum and some were denied, but, by agreement, we have pretty well cleared up the whole thing. I want to put on Mr. Reinohl, in order to identify the records which were produced.

MR. A. S. REINOHLE

was produced and sworn as a witness on behalf of the plaintiff, and testified as follows:

DIRECT EXAMINATION

BY MR. DOWNING:

Q Please state your name?

A A. S. Reinohl.

Q Are you employed by the Jacksonville Paper Company?

A Yes, sir.

Q Are you also employed by Southern Industries Company?

A No, sir.

Q Are you familiar with the records of the Southern Industries Company?

A Yes, sir.

Q Are they kept under your general charge and supervision?

A Yes, sir.

Q Under the subpoena duces tecum, issued in this case, the first item in the subpoena is as follows: This

is the subpoena directed to Mr. M. R. McGehee, who I understand, is your superior.

A Yes, sir.

Q All time records, payroll records, production records, of piece workers, extra labor vouchers, and other records of the defendants, Delia Crawford McGehee, et al., trading and doing business as Southern Industries Company, which relate to hours worked by and wages paid to the employees named in the bill of particulars and amended bill of particulars during the work weeks therein involved. Have you produced those records in Court?

A Yes, sir.

Q Will you please identify them?

A This is Southern Industries pay roll sheets and production records of the broom factory and coat hanger department.

Q Are they also records of the Southern Industries Company?

A No, sir.

Q Let us confine the examination, for the time being, to the records of the Southern Industries Company. Will you point those out please?

A These are the time books of the Southern Industries Company, and also the extra labor vouchers. All of Southern Industries Company. The weekly extra labor pay roll sheets.

Q Indicate first, Mr. Reinohl, which are the time books?

A These are the time books (witness indicating books).

MR. DOWNING: We ask that these be marked for identification as plaintiff's exhibits Southern Industries Nos. 1 to 12.

MR. KURZ: Your Honor, it occurs to me that we might save time for the Court by asking that the records be limited to a period within a reasonable time back from the time of the filing of the application for the injunction. For instance January, 1940.

THE COURT: He is merely identifying them.

MR. KURZ: I understand that. I was trying to save time. We are not insisting on formal identification—

MR. DOWNING: What we want to do is get them identified by the witness so we can examine them as we need them during the course of the trial.

THE COURT: I think it would be appropriate just to identify pertinent pages, just as you did in the Enterprise Box Company case, without putting them all in.

MR. DOWNING: We do not want to put them all in, but we want to get the identification by this witness, who is familiar with them and refer to them from time to time and offer such portion as we deem is relevant.

THE COURT: That will be permitted.

The instruments last above referred to were received and marked for identification plaintiff's Exhibits, Southern Industries 1 to 12, inclusive, for identification.

MR. DOWNING: Will you please designate, Mr. Reinohl, the payroll records of the Southern Industries Company, since October 24, 1938?

A These are the Southern Industries Company payroll records from October 24, 1938, through December 31, 1939.

THE COURT: Let the records show, Mr. Reporter, that counsel for the defendant agrees that identification of any of the records produced under the subpoena duces tecum, be waived, reserving, of course, the right to object to the competency, relevancy and materiality.

MR. DOWNING: We are not interested in formal identification. We want the witness, since we are unfamiliar with the records, to point out what the records contain, so in the examination of the witnesses, we may refer to them without confusion. It is really for the—

MR. KURZ: We will have the witness available here and as any particular record is called for, we will be glad to have him give you all the assistance you need, Mr. Downing, to find what you want.

MR. DOWNING: Our particular point is, when any witness is examined on the stand, Government witness, we may find it necessary to examine the records for one of these payrolls for one of these particular weeks. Unless these are indicated to us, we will not know what records to refer to, and it will be very irregular and inconvenient to call Mr. Reinohl back and forth as the witnesses are being examined.

THE COURT: Go ahead. You are taking up more time arguing than to get them in here.

MR. DOWNING: Have you a record covering the period since January 3, 1940?

A This trial covers that period.

MR. DOWNING: We ask that these be marked for identification as Plaintiff's Exhibits, Southern Industries Nos. 13 and 14.

The instruments last above referred to were received and marked for identification

as plaintiff's Exhibits, Southern Industries Nos. 13 and 14, for identification, respectively.

MR. DOWNING: Have you produced the book which contains the production records of the employees since October 24, 1938?

A I have. However, this book contains the records only since January 4, 1940. The records in Exhibit 13, also include the previous period.

Q I understand plaintiff's Exhibit for Identification 13, contains the production records for the period covered by that pay roll book?

A Yes, sir.

Q And the book you have now identified contains the production records since January 1, 1940?

A Yes, sir.

MR. DOWNING: We ask that this be marked for identification as Plaintiff's Exhibit, Southern Industries No. 15.

And the instrument last above referred to was received and marked for identification, Plaintiff's Exhibit, Southern Industries No. 15, for identification.

MR. DOWNING:

Q Have you produced any extra labor vouchers covering the period from October 24, 1938, to date?

A Yes, sir.

Q Are these all segregated or arranged according to date?

A According to month.

Q According to month?

A Yes. I think they are only through December, 1940, January 1940, December, 1938. Each month is—there is May, this is one from May to December, 1938. This is from December, 1938, through May, 1939.

MR. DOWNING: We offer these as one exhibit, Plaintiff's Exhibit, Southern Industries' Exhibit for Identification No. 16.

The instruments last above referred to were received and marked for identification, Plaintiff's Exhibit, Southern Industries No. 16, for identification.

THE COURT: You are not offering them in evidence, but just for identification?

MR. DOWNING: No, just for identification, your Honor.

MR. DOWNING:

Q What are these two books, Mr. Reinohl?

A They are the extra labor payroll sheets made up from the extra labor vouchers.

Q Do these cover the period from October 24, 1938?

A This is January 1, 1938.

Q To what date?

A This one is through December, 1939, and this one January, 1940, through December, 1940. That's all of 1939 and 1940.

Q Is there any extra labor payroll covering the period from October 24, 1938, to January 31, 1939?

A Yes, there was. I will have to produce that, if you care to have me do so. You have the vouchers for that other payroll sheet.

MR. DOWNING: We ask that these be marked for identification, Plaintiff's, Southern Industries Exhibit No. 17 and 18.

The instruments last above referred to were received and marked for identification, Plaintiff's Exhibit, Southern Industries No. 17 and 18, respectively.

MR. DOWNING: You have handed me an additional time book. Does it belong with the time books first identified?

A It does.

MR. DOWNING: We offer that as Plaintiff's Exhibit, Southern Industries, No. 19, for identification.

The instrument last above referred to was received and marked Plaintiff's Exhibit, Southern Industries No. 19, for identification.

MR. DOWNING: .

Q Have all of the records of Southern Industries been produced under the subpoena.

A Yes, sir.

Q Are there any other records in the possession, kept by the defendants, which relate to hours worked and wages paid to the employees named in the bill of particulars and amended bill of particulars?

A No, other than that I did not produce the extra labor payroll sheets from November, 1938.

Q Mr. Reinohl, the subpoena directed to the Jacksonville Paper Company listed as its first item, the following books and records: All time records, payroll records, extra labor vouchers, and other records which relate to the hours worked by and wages paid to the employees named in the bill of particulars and amended bill of particulars, during the work weeks therein specified, including the records of accumulations of deficiencies in hours charged against said employees. Have you produced here the records called for by that subpoena?

A Yes, sir.

Q Will you indicate first, the time records?

A (Witness produces two books).

Q Will you explain the manner in which these records are segregated, according to various branches, and as to the main office and warehouse in Jacksonville?

A Each group by weeks, includes Jacksonville and the branches which are operating under interstate commerce.

Q You mean by that, the branches on which the company concedes coverage under the Act?

A Yes, sir.

Q Does this volume, this loose leaf volume, cover the branches on which coverage is admitted, or branches on which coverage is not admitted?

A Branches on which coverage is admitted.

MR. KURZ: I think the Court should determine that and not the admissions. The witness may not answer that correctly. That is a conclusion.

THE COURT: Yes, the records as to the particular branches speak for themselves.

MR. DOWNING: I was just trying to expedite the identification.

MR. KURZ: Mr. Downing, have you designated them as so-called interstate and intrastate branches? I do not want to be technical—

MR. DOWNING: I prefer not to commit myself on that.

MR. DOWNING:

Q Have you any other volume which contains a payroll record on the main office and warehouse at Jacksonville, on the Florida Paper Company, the Partin Paper Company, the Pensacola Paper Company, and the Atlantic Paper Company, and the Capitol Paper?

A Yes.

Q Where are they?

A It is covered from April 29, 1940, to date.

Q Mr. Reinohl, the volume you have just identified also appears to contain records of branches at Tampa, Miami, Lakeland, Orlando, and St. Petersburg. Is that correct?

A That is only as to the truck drivers.

Q Only on the truck drivers?

A Yes.

Q It does not contain the records of the other employees in those branches?

A No, sir.

Q The file folder, which you identified as covering records in the branches at Jacksonville, Tallahassee, Pensacola, Mobile and Savannah, covers records for what period of time?

A For the week ending October 5th, through November.

Q What year?

A 1940.

Q Beginning what year?

A Beginning October 5, 1940. This first file is for the week ending May 4th; beginning April 29, 1940, through October. This is from October, through November.

Q 1940?

A 1940. All 1940.

MR. DOWNING: Plaintiff offers for identification, the two binders identified by the witness, for identification only, as plaintiff's Exhibits, Jacksonville Paper Company, Nos. 1 and 2.

The instruments last above referred to were received and marked for identification Plaintiff's Exhibits, Jacksonville Paper Company, Nos. 1 and 2, respectively, for identification.

MR. DOWNING:

Q Now, will you explain what these remaining time records consist of?

A They are the same as the other folders on the branches in question and also the truck drivers under the other branches.

Q Covering what period of time?

A From December 1, 1940, through March 31, 1941.

Q Those are the more current time records or payroll records?

A Yes, sir.

MR. DOWNING: We ask that the stack of payroll sheets, just identified by the witness, be marked for identification, as Plaintiff's Exhibit, Jacksonville Paper Company, No. 3.

The instruments last above referred to, were received and marked for identification, Plaintiff's Exhibit, Jacksonville Paper Company, No. 3, for identification.

MR. DOWNING:

Q Have you produced any time sheets or time books evidencing the hours worked by employees in the following branches? The Florida Paper Company, at Jacksonville; the Capitol Paper Company, at Tallahassee; the Pensacola Paper Company at Pensacola; and the Partin Paper Company at Mobile, and the Atlantic Paper Company at Savannah?

A Those files are the ones I just produced.

Q Have you produced any time sheets?

A Those are the time sheets.

Q Will you state, Mr. Reinohl, whether they are time sheets, or payroll sheets?

A Time sheets.

Q Will you state whether the company keeps a separate record or time sheet, signed by individual employees?

A A payroll sheet, signed by individual employees, yes, sir.

Q Since April 27, 1940, has the company kept a daily time sheet for certain of its employees?

A Those sheets just produced were the daily time sheets. Daily time and summary, covering the week's employment.

Q The sheets identified, Mr. Reinohl, appear to be payroll sheets. Will you answer the question propounded a moment ago?

MR. DOWNING: Will you read it, Mr. Reporter?
The question was read.

A I just produced the daily time sheets.

MR. DOWNING:

Q I will ask you if, beginning April 27, 1940, the company, in the branches at Jacksonville, Tallahassee, Pensacola, Mobile, and Savannah, did not require its employees to sign in and out on daily time sheets?

A Yes, sir.

A Have you produced those?

A You have those sheets.

Q Will you take these more recent ones—?

A Any one right on top, I can show you.

Q Will you show me the daily time sheets?

A There's the daily time sheets, and this is where they signed in and out. This is a summary for the week's employment. There's a sheet. One each day. And the time is calculated and shown on this weekly summary time sheet.

Q The daily time sheets then are appended to the payroll sheets for the particular week?

A Not to the payroll sheet, but to the weekly summary time sheet. This is not a payroll sheet.

Q Have you produced the payroll sheets?, z

A Yes, sir.

Q Will you please designate or identify the payroll records, or payroll sheets of the company, covering the period since October 24, 1938?

A These three files are the payroll sheets for all branches, outside of Jacksonville, including the period from January 31, 1938, through December 31, 1940.

Q Which is the earlier of those volumes?

A This (tendering book).

Q Which is the next?

A This (indicating).

MR. DOWNING: Plaintiff offers for identification, only, the three binders of payroll sheets, just identified by the witness, as Plaintiff's Exhibit, Jacksonville Paper Company, Nos. 4, 5, and 6.

The instruments last above referred to were received and marked for identifica-

tion Plaintiff's Exhibits, Jacksonville Paper Co., Nos. 4, 5, and 6, respectively.

MR. DOWNING:

Q Mr. Reinohl, is there a separate book covering the main warehouse, main office at Jacksonville, and the Florida Paper Company at Jacksonville, for the same period of time?

A The Florida Paper Company is included in the branch copies just furnished you.

Q Is it a separate volume of payroll sheets covering the main office and warehouse since October 24, 1938?

A Yes, sir.

Q With what date does that begin?

A This book begins in January, the 8th, 1938, and runs through the week ending December 28, 1940.

Q This covers only employees of the main office and the warehouse at Jacksonville?

A Yes, sir.

MR. DOWNING: We offer for identification only, the loose-leaf binder, just identified by the witness, as Plaintiff's Exhibit, Jacksonville Paper Company, No. 7.

The instrument last above referred to was received and marked for identification, Plaintiff's Exhibit, Jacksonville Paper Company, No. 7, for identification.

MR. DOWNING:

Q Mr. Reinohl, have you produced the extra labor vouchers, covering the period since October 24, 1938?

A (Witness tendering counsel papers).

Q Does the book which you have just identified, contain all of the extra labor vouchers, covering the period since October 24, 1938?

A Yes, sir.

Q In each of the branches? All of the branches?

A All of the branches.

Q Does that book also contain the extra labor vouchers for the main office and warehouse at Jacksonville?

A Yes, sir.

Q For all of the employees?

A Yes, sir.

MR. DOWNING: Plaintiff offers for identification, the book of extra labor vouchers just identified by the witness, as Plaintiff's Exhibit, Jacksonville Paper Company No. 8.

The instrument last above referred to was received and filed for identification, marked Plaintiff's Exhibit, Jacksonville Paper Company No. 8, for identification.

MR. DOWNING:

Q Are there any other records of the Jacksonville Paper Company which contain information or a record of hours worked by and wages paid to the employees named in the bill of particulars and the amended bill of particulars since October 24, 1938?

A No, sir, excepting that the file that I gave you is

through December 31, 1940. I have those since that time.

Q Have you produced, Mr. Reinohl, the records called for in item two of the subpoena, as follows:

All letters, notices, bulletins and other notifications and records purporting to establish the terms of re-employment and hours to be worked by all employees named in the bill of particulars, and amended bill of particulars, who were re-employed after they were purportedly dismissed on or about April 29, 1940?

A I have some of those. Not the complete—I may not have all of the copies of those, but I have copies of some of the letters to the managers. Also copies of letters to most of the employees and copies of the employment notices, but I am careful to have me do so, I think, covering the re-employment. Now, I did not produce all of these, but if I can furnish the additional ones, but they are just like these.

Q Are these typical of all of the notices and letters?

A Yes. The same thing. They were used all the way through. This is a carbon copy of the notice. This here, I do not think they are material records. I do not think you called for that.

Q Are these the records called for by item two of the subpoena with reference to the re-employment arrangement?

A Yes, sir.

MR. DOWNING: We ask that this file or clip of letters, and notices, be marked for identification only, as plaintiff's Exhibit, Jacksonville Paper Company, No. 9.

The instruments last above referred to were received and marked for identification.

tion, Plaintiff's Exhibit, Jacksonville Paper Company No. 9, for identification.

MR. DOWNING:

Q Mr. Reinohl, have you produced the records called for in the third item of the subpoena, as follows:

"All orders, invoices, shipping documents, accounts receivable, and other records, which relate to sales and shipments of Macon Paper Company to points outside of the State of Georgia, and all records covering sales and deliveries by Macon Paper Company to H. E. Poor, Columbus, Georgia.

A No, sir, but I think our attorney has most of that information.

Q Do you have the ledger sheets on those sales?

A Yes, sir.

Q Including sales from Macon?

A To points outside the State.

Q Mr. Reinohl, have you produced all orders, invoices, shipping documents, accounts receivable and other records, which relate to sales and shipments to points outside the State of Florida, by defendants' following branches: Tampa, Miami, Orlando, Lakeland, St. Petersburg and West Palm Beach?

A I think our attorney has that information also.

Q Have you produced the records called for by item five of the subpoena? All accounts payable and other records, which contain the names and addresses of all persons, firms and corporations, who, since October 24, 1938, have supplied merchandise to each of the following

branches of the Jacksonville Paper Company: Tampa, Miami, Orlando, St. Petersburg, West Palm Beach, Lakeland and Macon?

A I have produced our current accounts payable ledger. Now, that covers merchandise that was purchased for any of the branches. Jacksonville and any branches, and as to whether or not that covers all purchases made since October 24, 1938, I can't say, because during that period there would naturally be a lot of inactive or dead sheets, which would be taken out and filed with the dead ledger file. However, this covers all of the current accounts.

Q This covers all of the current accounts, or accounts payable in the records, which you have produced?

A Yes, sir.

MR. DOWNING: We offer this for identification only, the file of accounts payable, identified by the witness as Plaintiff's Exhibit, Jacksonville Paper Company No. 10.

The instrument last above referred to was received and filed for identification, Plaintiff's Exhibit Jacksonville Paper Company No. 10, for identification.

MR. KURZ: Now, Your Honor, we would like to have permission to take that particular file out tonight and return it in the morning, because it is a current record.

THE COURT: You will be permitted to do that.

MR. DOWNING:

Q Have you produced, Mr. Reinohl, the following records called for by item six of the subpoena? All statements, reports, inventories and other records containing

information relating to the inventory value of merchandise, inventories at each of the following branches of defendant, at the last two inventory periods: Tampa, Miami, Orlando, St. Petersburg, West Palm Beach, Lakeland and Macon?

A No, sir.

Q Do you have those available at your office?

A Yes, sir.

Q Will you produce those tomorrow?

A Yes, sir.

Q Mr. Reinohl, have you produced the records called for in item seven of the subpoena, as follows: All contracts, or memoranda thereof, in existence since October 24, 1938, between the defendants and any customer of the defendants as a result of which defendants ordered goods from out of state sources to supply said customers through each of the following branches, or under which defendants made periodic or recurrent delivery of merchandise to each of the following branches: Tampa, Miami, Orlando, St. Petersburg, West Palm Beach, Lakeland and Macon?

A No, sir.

Q That item refers to standing orders, Mr. Reinohl. Does the company have, or do you have in your possession any contracts or memoranda of standing orders with your customers?

A That does not come under my jurisdiction. I do not know whether they have those records in the sales department or not.

Q Under whose jurisdiction would those records be kept?

A Mr. C. C. McGehee.

Q Have you produced, Mr. Reinohl, the accounts receivable ledger sheets covering sales by the Macon Branch and the Miami Branch to out of state customers?

A No, sir.

Q Do you have those?

A Our attorney has the Macon Branch. And the Miami Branch, we have, if you have reference to the foreign shipments. I have those at the office, and can produce them.

Q Will you produce those tomorrow?

A Yes, sir.

Q Have you produced, Mr. Reinohl, the records called for by item nine of the subpoena, as follows: This relates to contracts establishing agencies for the distribution of goods manufactured by out of state manufacturers: All contracts or memoranda of contracts under which defendant has been appointed to act as Agent for the distribution of any merchandise by or through any of the following places: Tampa, Miami, Orlando, St. Petersburg, West Palm Beach, Lakeland, and Macon?

A No, sir.

Q Are such contracts kept in your department under your supervision?

A No, sir.

Q Under whose supervision would such contracts and records be kept?

A If there are any, it would be in the Sales Department under Mr. C. G. McGehee's jurisdiction.

Q Have you produced the following items called for in the subpoena duces tecum: All price books for the Fine Paper Department and all price books for the Coarse Paper Department? Current price books?

A No, sir.

Q Do you have those readily available?

A Yes, sir.

Q Will you produce the current price books for each department?

A You mean the price books?

Q Yes, sir.

THE COURT: What is the materiality of that?

MR. DOWNING: The price books contain a complete list and description of all of the items and list of goods carried generally by the defendant, in stock. They will indicate the sources from which the defendants obtain their stock of goods. We simply want them for reference during the trial and if possible, for reference in questioning witnesses.

THE COURT: How much longer is this going to take?

MR. DOWNING: One other item, your Honor.

MR. DOWNING:

Q Mr. Reinohl, have you produced the following records: All correspondence, telegrams and other communications sent since July 1, 1940, to all persons, firms or corporations who have supplied you with merchandise?

A No, sir.

Q Do you have such a record?

A Well, there may be such records available in the Sales Department, but it would be a considerable job to check back all of it in the files.

Q Mr. Reinohl, have you produced the following records: All releases, covenants, and contracts not to sue and all memoranda evidencing settlements of back wages made with its employees since February 8, 1940?

A Yes, sir.

Q Have you got those available?

A Yes, sir.

Q You have handed me a package of truck drivers payroll adjustment sheets. Will you explain what they are?

A During the period—they are covering adjustment of wages during the period when the truck drivers were placed under the Interstate Commerce Commission as of October 15, 1940, through December 7, 1940, after which time all of those payments were made each week covering any over time.

Q By over time you mean above what period? What number of hours?

A Above the number of hours for which they are paid on the schedule on which they are employed.

Q You mean by that the number of hours for which they were purportedly employed on April 29, 1940?

A No, sir, that has no bearing on the employment of April 29th. That's on the truck drivers only.

Q Will you state generally what was the basis of their employment?

A All truck drivers who are operating under the Interstate Commerce Commission are employed at a minimum rate of thirty cents per hour for all the time worked which is a maximum of sixty hours.

Q Did you make some statement with reference to their overtime hours?

A Yes, sir.

Q At what point did they begin receiving overtime compensation?

A If we have a truck driver on the payroll employed for fifty hours at thirty cents an hour, if he works over fifty hours, he gets thirty cents an hour for all he worked.

Q It is those payments which are represented by these payroll adjustment sheets?

A Yes, sir.

Q Did the company on or about April 29, 1940, enter into a purported re-employment contract with its truck drivers, also?

A That I do not recall. I know that the truck drivers who were in the branches, in the so-called intrastate branches, were not taken into consideration. They were not included in that arrangement. As to whether any of the other truck drivers were included, I would have to refer to the records.

Q In any event, as I understand your testimony, these sheets represent payments for overtime hours worked above the contract hours by the truck driver?

A Yes, sir.

Q Or the alleged contract hours?

A The contract hours.

MR. DOWNING: Plaintiff offers for identification only, the package of sheets identified by the witness, marked truck drivers payroll adjustment sheets, as Plaintiff's Exhibit, Jacksonville Paper Company, No. 11.

The instruments last above referred to were received and marked for identification plaintiff's Exhibit, Jacksonville Paper Company No. 11, for identification.

MR. DOWNING: You have handed me a number of mimeographed release forms, bearing the signature of various individuals. Will you state what they consist of?

A They consist of payments made on the vouchers which were just handed you covering the adjustments from October 15, through December 7, 1940.

Q Do I understand that in each case, where such an adjustment was made, the company took a release in the form evidenced here, from the truck driver?

A Yes, sir.

MR. DOWNING: Plaintiff offers for identification only, the stack of releases just identified by the witnesses as Plaintiff's Exhibit, Jacksonville Paper Company, No. 12.

The instruments last above referred to were received and marked for identification, as Plaintiff's, Jacksonville Paper Company, No. 12, for identification.

MR. DOWNING:

Q Do you have in your possession any other receipts or releases of any similar type, taken from the other employees representing the settlement of back wages since the filing of the complaint?

A No, sir.

Q Have, to your knowledge, any such settlements been made with other employees, than truck drivers?

A I do not know of any.

Q Will you state to the Court, Mr. Reinohl, what this record is, which is marked, "Accumulated Hours, Jacksonville, Florida?"

A That covers a record of the difference between the hours for which the employees have been paid and the number of hours that they have actually worked.

Q Since what date?

A Since August—since the week ending August 3, 1940.

Q What branches are covered by that book?

A Jacksonville, Florida Paper Company, Tallahassee, Pensacola, Mobile, Savannah, Georgia.

Q Does it include both the main office and warehouse employees at Jacksonville?

A Yes, sir.

MR. DOWNING: For identification only, plaintiff offers the book identified by the witness as plaintiff's Exhibit for Identification, Jacksonville Paper Company No. 13.

The instrument last above referred to was received and marked for identification, Plaintiff's Exhibit, Jacksonville Paper Company, No. 13, for identification.

Q What are the remaining records which you have produced?

A This is a list of the employees that are covered under those releases that you have; that's a part of this same release.

Q An extra labor payroll covering the payment for the overtime hours?

A Yes, sir.

MR. DOWNING: Plaintiff offers for identification only, the stack of extra labor payroll sheets, identified by the witness as Plaintiff's Exhibit, Jacksonville Paper Company No. 14.

The instrument last above referred to was received and marked for identification, Plaintiff's Exhibit, Jacksonville Paper Company, No. 14.

MR. DOWNING:

Q Have you produced any other records, Mr. Reinohl?

A No, sir, that covers it all.

MR. DOWNING: We have no other questions.
(Witness temporarily excused)

THE COURT: We will take a recess now until nine thirty o'clock, tomorrow morning.

And thereupon Court adjourned to be re-

convened at nine thirty o'clock in the forenoon, Wednesday, April 23, 1941.

And thereupon at nine thirty o'clock a. m., Wednesday, April 23, 1941, Court reconvened pursuant to adjournment and the following further proceedings were had:

THE COURT: You may proceed.

MR. DOWNING: I believe as we closed yesterday, Mr. Reinohl was on the stand.

MR. A. S. REINOHLE,

being recalled as a witness in behalf of the plaintiff, testified further as follows:

THE COURT: Gentlemen, suppose we proceed on these branches that are in dispute, taking the testimony as to Lakeland and St. Petersburg and so forth, and take that up. I have not fully completed the reading of the brief that was submitted to me yesterday afternoon. I had another hearing after we adjourned here, and I would suggest we take up the evidence on those first. That would be my suggestion. Of course, I suppose you will want to put your general testimony in, but I am not quite ready to rule on the proposition that was argued yesterday, as to whether or not an injunction would follow as to those branches that are admitted to be interstate commerce, where it is already admitted there was not a compliance with the law up to a certain date. I am not quite ready to rule on that. When you come to the point of branching out, after you get your general testimony in, I suggest you take up the testimony with reference to those, until I have a chance to look further into this.

MR. DOWNING: Your Honor, we have present in the court room, Mr. George Wheeler, an Economist, who will be one of our witnesses. I should like your Honor's

permission to let him remain in the court room along with Mr. John R. Thomas, our Inspector.

THE COURT: Is there any objection?

MR. KURZ: No objection.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. DOWNING:

Q Mr. Reinohl, have you produced this morning the records of the Miami and Macon branches, showing interstate sales and shipments by those branches?

A I have the records covering the foreign shipments from Miami. Our attorney has the records on the other shipments, either out of Miami or Macon, if any.

Q Will you identify the records covering the sales of the Miami branch to Nassau and to other points outside of the State of Florida?

A These are the ledger sheets covering the shipments from Miami to Nassau.

Q Are these on current accounts, Mr. Reinohl?

A Yes, sir.

Q Where are these ledger sheets kept now?

A In Jacksonville. We are handling the Nassau business out of the Jacksonville warehouse and these are part of the Jacksonville records.

Q Do you also have part of the records of the Miami branch covering those sales and shipments?

A A portion of those charges were made from the Miami branch. All previous to January 16th, I believe, were made from the Miami branch, and I have here the old ledger sheets covering shipments made previous to those.

Q They are the shipments in this stack?

A Yes, sir.

Q Down to what date?

A Up to the point where the Miami branch was transferred to a machine bookkeeping record.

Q When was that?

A That was about October, 1940, at which time all of the unpaid items in those original sheets were transferred to the machine record.

Q Have you produced copies of invoices of the Miami branch covering those sales?

A Yes, sir.

Q To Nassau?

A Yes, sir; covering the charges that are on those current ledger sheets.

Q What period of time is covered by this stack of blue invoices?

A From about April, 1940, to January, 1941.

Q Approximately nine months?

A Yes, sir.

Q And the charges appearing on these blue invoices

are posted to the general ledger sheets that you have produced?

A Yes, sir.

Q Do you have any other records of shipments to Nassau from Miami?

A I have also bills of lading covering those same shipments on which I just handed you the invoices; the foreign shipments.

Q These are the bills of lading covering the shipments evidenced by the blue invoices?

A Yes, sir.

MR. DOWNING: We offer for identification only, the records identified by the witness, and ask that they be marked for identification as plaintiff's exhibit, Miami 1, 2, 3, 4.

The instruments last above referred to were marked for identification as Plaintiff's Exhibits Miami 1, 2, 3, 4, respectively.

Q Mr. Reinohl, have you produced the price books this morning, the current price books?

A Yes, sir. Mr. McGehee has those.

Q May we have them identified now? Which of these, Mr. Reinohl, is the fine paper price book?

A This folder.

Q And which is the coarse paper price book?

A Here's the coarse paper file.

Q There are the current price books?

A Yes, sir.

MR. DOWNING: We ask that these be marked for identification only as plaintiff's exhibits, Jacksonville Paper Company Nos. 15 and 16.

The instruments referred to were received and marked for identification as Plaintiff's Exhibits Jacksonville Paper Company Nos. 15 and 16.

A We would also like to have permission to take the current Nassau ledger sheet to the office when we return.

MR. DOWNING: The Court granted that permission.

THE COURT: That will be permissible.

Q Mr. Reinohl, have you produced the inventories on the branches on which no coverage is admitted by the company?

A Yes, sir.

Q The Macon, Georgia, branch; the Tampa, St. Petersburg, Lakeland, Orlando, Miami and West Palm Beach branches?

A Yes, sir.

Q And for what inventory period or periods—?

A For the fiscal year ending May 31, 1940.

Q The inventory covered in this stack of papers?

A Yes, sir.

Q Do these inventories cover the value of goods on hand at those branches at the end of the last fiscal period?

A Yes, sir.

MR. DOWNING: We ask that this be marked for identification only as Plaintiff's Exhibit Jacksonville Paper Company No. 17.

The instrument referred to was marked for identification as Plaintiff's Exhibit Jacksonville Paper Company No. 17.

MR. DOWNING: No further questions.

MR. KURZ: We have no cross examination.

MR. DOWNING: That is all, Mr. Reinohl.

(Witness excused)

MR. DOWNING: Your Honor, it is possible that we shall need to recall Mr. Reinohl during the course of the trial, with further reference to particular portions of these records.

THE COURT: Very well.

MR. WALTER O. MATHIS,
produced as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Please state your name.

A Walter O. Mathis.

Q Mr. Mathis, are you presently employed by Southern Industries Company?

A Yes, sir.

Q Where is that plant located?

A 23rd and Evergreen.

Q In Jacksonville?

A Yes, sir.

Q How long have you been employed by Southern Industries?

A Well, I have been employed by the company ever since 1929.

Q Have you worked for them during that entire period of time?

A With the exception of sixteen months, sir.

Q When was that sixteen months?

A From in October, in 1937, until February in 1939.

Q Ever since February, 1939, you have been continuously in their employ, is that correct?

A Yes, sir.

Q What department of Southern Industries are you employed in?

A Coat-hanger department.

Q. What are your present duties in the coat-hanger department?

A Well, I am foreman.

Q When did you become foreman of the coat-hanger department?

A Last April, sir.

Q That is April, 1940?

A Yes, sir.

Q About what date? Do you recall?

A About the 18th, I believe, sir.

Q When?

A About the 18th, I believe.

Q What were your duties prior to April 18, 1940, in the coat-hanger department?

A Machine operator was all.

Q Was that in the production of these various coat-hangers?

A Yes, sir.

Q Mr. Mathis, was there any segregation within that department as to coat-hangers which were destined for outside of the state and for coat-hangers which were to be used for local consumption?

A No, sir.

Q From the time you returned to work in December, 1939, until April 18, 1940, what were your customary hours of work each week?

A Well, when I went back to work in February, I worked a good bit of overtime.

Q Well, do you recall what time you would go to work in the morning?

A I would go to work in the afternoon and work all night.

Q What were those hours, approximately?

A From five o'clock in the afternoon until six o'clock in the morning.

Q And would you take any time out for a midnight meal?

A No, sir.

Q How many days a week would you work there?

A Well, some weeks I would work—for a week or so I worked every day—every night; and then I—

Q You mean every day or just the working week?

A Well, seven days. There's one week I worked seven days.

Q How long did you continue to work those hours, Mr. Mathis, after you returned to work?

A Well, I didn't work it long, because I couldn't hold up under it.

Q Well, approximately how long? Three or four weeks?

A Something like that, yes, sir.

Q Then what were your hours?

A Well, I would go to work at five o'clock and work until about eleven and twelve. I would work my shift.

Q And then would you put in any other time besides that?

A No, sir, I wouldn't put in any other time besides that.

Q From February, '39, until October 24th, 1939, did you customarily put in more than forty-four hours a week?

A Yes, sir, I did.

Q When you returned to work in 1939, what rate of pay were you hired at?

A I was on a piecework basis.

Q What was the piecework rate?

A Twenty-six cents a thousand for the hangers I produced.

THE COURT: What was his answer?

The answer was read to the Court.

THE COURT: What?

MR. SPITZ: Twenty-six cents a thousand for the hangers he produced.

THE COURT: I thought he said twenty-six hundred thousand.

Q Now, when you work forty-five hours a week would there be any change in your rate?

A No, sir.

Q Was there any additional compensation paid you above and beyond the twenty-six cents per thousand?

A No, sir.

Q Subsequent to the time that you received twenty-six cents a thousand, what was your rate, or do you recall when that rate was changed?

A Well, I don't recall. That was during the time of the period that I was not there.

Q No, what I am getting at is, you went back to work for twenty-six cents a thousand?

A Yes, sir.

Q In February, 1939. Subsequent to that time, was your rate of pay changed?

A Back before I was away from down there, it was.

Q No, you do not follow me. When you went back to work in February, 1939, you stated that you were hired at a rate of twenty-six cents a thousand. Is that correct?

A Yes, sir.

Q Now, after you were put on that rate, are you still on that rate?

A No, sir.

Q Have there been any changes in your rate?

A Yes, sir.

Q What was the first change that occurred after you went back there?

A Well, the first change, I was put on a thirty cents an hour and a commission.

Q What was the commission?

A Three cents a case, six cents a thousand.

Q In other words, thirty cents plus six cents a thousand for every thousand of coat-hangers produced by you?

A Yes, sir.

Q Do you recall when that rate change took place?

A No, sir, I don't, positively. I think though it was in January, 1940.

Q Well, to refresh your memory, was it on or about the time of the inspection by Mr. Thomas here?

A Yes, it was after Mr. Thomas' inspection.

Q Right after that?

A Yes, sir.

Q And subsequent to that time was there any change in your rate? In other words, after that.

A Yes, sir.

Q When did that take place?

A Last April.

Q What was that change?

A Straight time; thirty dollars a week, sir.

Q Now, at the time of the inspection, I believe you stated that prior to the inspection you customarily worked over forty-four hours a week?

A Yes, sir.

Q And that you did not receive any additional compensation for overtime above the straight rate at which you were employed, is that correct?

A Yes, sir, that's right.

Q And after the inspection—between the time of the inspection and the time you were placed on the straight salary of thirty dollars a week, did you customarily work over forty-two hours a week?

A When it was required for the adjustment of the machines, I did, your Honor.

Q Was it customarily required? Would you work at night?

A Yes, sir, I did work at night some.

Q Did you go down to work on Saturday?

A No, sir.

Q Now, when you worked overtime, what was your rate of compensation?

A I received forty-five cents an hour for it.

Q Now, at the rate at which you were hired during that period, which I believe you stated was thirty cents an hour and six cents a thousand, what were your average earnings an hour?

A My average earnings were about forty-two cents, sir.

Q And when you worked overtime, you were paid a straight forty-five cents an hour, is that correct?

A Yes, sir.

Q Now, since you have been placed on a straight salary of thirty dollars a week, which was April 25, 1940, did you, from April 25, 1940, until on or about October 24, 1940, customarily work in excess of forty-two hours a week?

A Yes, sir.

Q Approximately how many hours would you work a week during that period?

A Well, I worked every Saturday forenoon.

Q For what period of time? Four and a half hours.

A Yes, sir.

Q Let me ask you this: The machines were operating on what schedule during that time, a forty-two hour schedule?

A Well, after Inspector Thomas came out there to inspect, with his investigation, we started working regular hours.

Q Of the forty-two hour week?

A Yes, sir.

Q And when you became foreman, then you worked that regular forty-two hours plus an additional four hours on Saturday?

A Yes, sir.

Q Did you work any other time except on that basis?

A Only when it was required.

THE COURT: Was that after the inspection?

A Yes, sir.

Q Now, after October 24, 1940, when, under the Act, the hours were reduced to forty a week, did the coat-hanger department operate on a forty hour week?

A Yes, sir.

Q Did you just work those forty hours?

A I worked Saturday forenoon also.

Q You continued to work overtime on Saturday?

A Yes, sir.

Q Did you occasionally or customarily go down at night or stay after the boys knocked off, to look after the machinery?

A No, sir, I never went down after they knocked off, but I was called down there during their shift.

Q What do you mean you were called down there during their shift?

A Well, while they were working, their machines would get out of adjustment and I would have to go make the adjustment.

THE COURT: What rate of pay did you receive for that?

A I didn't receive any, your Honor.

MR. SPITZ:

Q That was during the time you were on straight salary of thirty dollars a week, is that correct?

A Yes, sir.

Q Since you have been on straight salary, have you ever received any additional compensation beyond and above the thirty dollars a week?

A Yes, sir.

Q What was that additional compensation for?

A I received \$2.01 for overtime one week.

Q What was the reason for that? Will you go into that?

A Well, one of our boys left us—there was one shift open and I was asked to work what overtime I could and I would receive a commission.

Q Now, when you speak about overtime, do you mean overtime in running the machines?

A Yes, sir.

Q Mr. Mathis, you say they gave you the title of foreman down there. What is most of your time spent doing down there?

A Operating machines, sir.

Q Do you operate a machine?

A Yes, sir.

Q Do you operate with the other boys on a regular schedule?

A Operate mine eight hours alone, by myself.

Q For five days a week?

A Yes, sir.

Q In other words, you operate that machine forty hours?

A Yes, sir.

Q And the reason that you got this overtime compensation is that you worked the machine an additional couple of hours; is that correct?

A Yes, sir.

Q But you have never received any overtime compensation for going down there on Saturdays and fixing the machines?

A No, sir.

Q Is that correct?

A Yes, sir.

MR. SPITZ: No further questions.

BY THE COURT:

Q How many times did you go down and fix the machines on Saturday?

A I worked every Saturday, sir, and when I would go down at night—I don't know how many times—a time or so a week, possibly.

Q Well, it was at night that you fixed the machines, was it not?

A Yes, sir.

Q Not Saturday?

A That's right, sir.

Q How many times did you go down, on an average, fixing the machines, at night?

A Well, a couple nights a week.

Q How long would it take you?

A Sometimes it wouldn't take but a few minutes and sometimes it would take an hour.

MR. SPITZ: May I ask another question:

Q What would you do on Saturday when you would go down?

A I would go down and oil up the machines and make adjustments and see that they was in shape for the next week.

Q That they were in shape for the next week?

A Yes, sir.

Q Saturday it was more of an adjusting period and at night you went down to repair a breakdown or something?

A Yes, sir.

BY THE COURT:

Q Did you get any pay for going down at night?

A No, sir.

Q Did you get overtime pay for working on Saturday?

A No, sir.

Q Were you required to go down there on Saturday and do that work?

A Yes, sir.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. KURZ:

Q After you became foreman in April, 1940, did you receive any compensation in addition to your thirty dollars a week?

A I did, sir.

Q Did you receive any compensation on coat-hangers, in addition to that thirty dollars?

A I received a cent on the production the other boys made besides my commission, for twelve weeks. At the time I was on thirty cents an hour and three cents a case.

Q You mean you received a commission on what the other men in your department made during that time?

A Yes, sir.

Q Who employs the men in your department, or the workers in your department?

A I beg your pardon? You mean who hires them?

Q Yes.

A I do, sir.

Q Do you have the right to discharge them?

A Yes, sir.

Q Do you supervise their work generally?

A Yes, sir.

Q Do any of those men in your department handle the adjustment of machines?

A No, sir. They are not familiar with them. The ones I have now, they do know several adjustments and I haven't been having to go down much lately at night.

Q But the adjusting and keeping the machines in order is primarily your duty?

A Yes, sir.

Q How much compensation did you make during the time you were on the piecework basis? That was in, I believe you said prior to April, 1940.

A Well, when we would make—we just got paid for our cases. We didn't receive no extra.

Q How much would that amount to a week?

A Well, I couldn't say, sir.

Q You got paid once a week, didn't you?

A Yes, sir.

Q You don't remember how much that was?

A Well, I know about what I would make. I would make about twenty dollars a week.

Q You receive a commission now in addition to your thirty dollars, do you not?

A No, sir.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. SPITZ:

Q One question, Mr. Mathis: Just to clear the record. On this commission basis, do I understand you correctly that when you were placed on a thirty dollar a week salary, the only extra commission or compensation you have ever received was that one time when you ran these machines overtime, above and beyond the forty hours?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q When you received this commission that Mr. Kurz was talking about, this one cent for each thousand produced by the men under you, that was when you were on the commission basis yourself?

A Yes, sir.

Q When you were getting thirty cents plus six cents a thousand?

A Yes, sir.

THE COURT: Well, that commission you got from

the other men's labor, was that compensation for your extra duties as foreman in keeping up the machines?

A Yes, sir.

THE COURT: Will you tell us approximately what you earned per week out of that commission?

A Around anywhere from three to three and a half dollars a week, sir.

THE COURT: How many men did you have working under you?

A Two.

THE COURT: That is all.

MR. SPITZ:

Q There was no agreement, was there, Mr. Mathis, that that additional compensation that you just spoke of was for overtime, was there?

A No, sir.

MR. SPITZ: That is all.

RECROSS EXAMINATION

BY MR. KURZ:

Q Are you required to keep a time record at the present time, of your hours worked?

A No, sir, I am not.

Q Do you punch the time clock?

A Yes, sir.

Q Isn't that a time record?

A Yes, sir.

Q You keep that?

A Yes, sir.

Q Every time you go in, you punch the clock, is that correct?

A Yes, sir.

MR. KURZ: That is all.

FURTHER REDIRECT EXAMINATION

BY MR. SPITZ:

Q Do you punch the clock on Saturday now, too?

A Yes, sir.

MR. SPITZ: That is all.

FURTHER RECROSS EXAMINATION

BY MR. KURZ:

Q Did you take any rest periods during the time that you were employed on the machines?

MR. SPITZ: Your Honor, I object to that. That is a conclusion of law as to what constitutes a rest period.

THE COURT: Overruled.

A What is the question, please, sir?

Q (The question was read to the witness).

A No, sir, I haven't, since I have been on straight time.

Q Before that time did you take any time off for a rest?

A Yes, sir; taken off the noon hour, lunch hour.

Q Did you take off any time except the lunch hour?

A No, sir.

Q In other words, you operated the machines steadily except for the lunch period?

A Yes, sir.

Q Did you do that while you worked at night?

A Yes, sir.

Q When did you take your lunch period then?

A Well, when I first went back to work, I would eat my lunch and leave the machines running. I wouldn't shut them down for my lunch; just eat my lunch while the machines was running.

Q How long did you do that?

A Well, I don't know right off how long it was, sir.

Q When did you commence to take a regular lunch period?

A I never have taken a regular lunch period, sir.

Q Not at any time, either before or after you were placed on a straight salary?

A I haven't taken a lunch period since I went back to work on—with the exceptions of a little while when one of my men was off and I wasn't running but two shifts. Now we run three shifts and we have to work straight through to get in three eight hour shifts during the twenty-four hours.

MR. KURZ: That is all.

MR. SPITZ: No further questions.

BY THE COURT:

Q What were your earnings per week when you were working on a piecemeal basis? Piecework basis?

A Well, it varied from about twenty to twenty-five dollars a week.

Q How many hours did you average per week on that basis?

A I don't know, sir, how many there was. That was just after I went back to work down there and I was working overtime.

THE COURT: All right.

MR. SPITZ: One more question: Now, at the time of Mr. Thomas' inspection here, how many hours did you average working a week?

A Well, we worked almost unlimited time.

Q I am talking about when you first went to work, when you said you were working eleven hours, but after that first four or five weeks, to the time of Mr. Thomas' inspection, what was your average work week?

A We worked—there was three of us and we cut

down to three eight-hour shifts, and as the stock would require, we would work—according to how the stock would require; sometimes we wouldn't work the regular week, and then sometimes we would work Saturday and Sunday.

Q What was your average? Have you any idea?

A Well, it would average twenty-five or twenty-six dollars a week.

Q I am talking about the hours. Did you average forty, forty-five, fifty, fifty-five or sixty hours a week?

A Well, I don't know. I never kept any record of it. There isn't any record of it kept, what we would average. I imagine forty-five or forty-six hours.

MR. SPITZ: That is all.

THE COURT:

Q Let me see if I get this straight. You said you were out about sixteen months. Is that right?

A Yes, sir.

Q Now, when did that absence period start?

A It started in October—I believe it was June, in 1937.

Q And then you came back in February, 1939?

A Yes, sir.

Q So the period that you have been testifying to was in that period since February 1, 1939, is that right?

A Yes, sir.

Q And not prior to the time you quit?

A No, sir.

THE COURT: I see. That is all.

MR. SPITZ: You may come down.

(Witness excused)

MR. RUBEN JOHNSON,
produced as a witness on behalf of the plaintiff, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Will you please state your name and address?

A Ruben Johnson, 3333 West Lake Street.

Q Your first name?

A My name?

Q Yes, sir.

A Ruben Johnson. Ruben Thomas Johnson.

Q Mr. Johnson, are you presently employed by the
Southern Industries Company?

A I am.

Q How long have you been employed by them?

A Since December in 1935.

Q Have you worked with them continuously since
that date?

A I have.

Q Since October 24, 1938, what have been your duties in connection with your employment with Southern Industries?

A Bag machine adjuster.

Q You have been bag machine adjuster since that time, down to the present date?

A Yes, sir.

Q Who is the head of that department?

A Mr. Parrisy.

Q On or about October 24, 1938, do you recall what your salary was?

A Well, it was \$32.50 a week, I think.

Q To refresh your memory, weren't you raised to that \$32.50 shortly after that?

A Yes, I was working by the hour when the Wage and Hour law came into effect, yes.

Q Do you remember what your hourly rate was?

A Sixty-seven and a half cents per hour.

Q Sixty-seven and a half cents per hour?

A Yes.

Q And then it was a month or two later that you were raised to thirty-two dollars and fifty cents?

A Yes, sir, I was put on a salary about a month later.

Q When was that? About January, 1939?

A Well, it's been so long. It was somewhere around then, yes, sir.

Q Now, Mr. Johnson, what were your hours of work—customary hours of work on or about October 24, 1938?

A Well, we were working forty-nine hours a week, when the Wage-Hour law came into effect.

Q Was there any change in those working hours at that time?

A Well, I think we worked that way a few weeks. I don't recall how many. It's been so long now I don't remember.

Q Well, during those weeks that you were working at an hourly rate of forty-nine hours, did you receive time and a half for overtime?

A No, we didn't do that.

Q What are your hours at the present time, Mr. Johnson?

A Well, right around forty-four hours now.

Q Forty-four hours?

A Yes, sir.

Q Mr. Johnson, when the bag department runs on a given schedule of say forty or forty-two or forty-four or forty-six hours do you customarily work a longer period of time than the average employee of the bag department?

A Beg pardon?

Q I say, if the bag department is on a schedule of forty hours a week—by that I mean the machines—

A Yes, sir.

Q Do you customarily work more than forty hours yourself?

A Well, I work the forty hours and we have to go in Saturday morning and repair; put in around four hours Saturday morning.

Q Since October 24, 1938, has it been customary for you to go down there on Saturdays and put in those repairs?

A Well, I suppose so.

Q I mean, have you customarily gone down there on Saturdays?

A Yes; it's required; we have to go.

THE COURT: What was his answer?

The answer was read.

Q You stated shortly after the Act became effective, you were raised to \$32.50. Have you received any raise subsequent to that time?

A Any raise since then?

Q Yes, sir.

A Yes, sir.

Q When was that and what was the amount.

A I was raised to thirty-five. I don't just remember when. About two—about three months ago, I guess.

Q About February, 1941?

A About February, yes, sir.

Q Mr. Johnson, have you ever received time and a half for hours worked over the forty-four hours during the period from October 24, 1938? Did you receive time and a half for hours worked over that?

A No.

Q Mr. Johnson, from the period from October 24, 1939, to October 24, 1940, did you receive time and a half for the hours that you worked over forty-two in any given week?

A Will you state that again?

Q In other words, during the period from October 24, 1939, to October 24, 1940, have you worked over forty-two hours in any week or did you receive time and a half at regular rate of pay or were you just on a straight rate?

A No, I was just on a straight rate.

Q Since October 24, 1940, have you received time and a half for the hours worked over forty in any one week?

A No.

Q Mr. Johnson, in so far as you know from your own personal knowledge, was any attempt made to keep a record of your time prior to the installation of a time clock at Southern Industries?

A Well, my records on the time clock there now, for the past year.

Q Yes, but I mean prior to the time that it was installed.

A Well, they didn't keep any hours then; just put down the salary, you know, at the end of the week.

THE COURT: When was the time clock installed?

Q To refresh your memory, Mr. Johnson, was the time clock installed on or about the time or immediately after Mr. Thomas made the inspection?

A Just about the time Mr. Thomas came out.

THE COURT: When was that?

A That was in January of 1940, wasn't it? January of 1940, sometime along there.

MR. SPITZ: That is correct, your Honor.

Q Mr. Johnson, to get the record straight—I believe you have already stated that you usually worked four or five hours additional above the regular schedule by coming down on Saturday and working. Is that correct?

A That's right.

Q In other words, when the shift was working on a forty-four hour schedule, you worked about forty-nine hours?

A That's right.

Q When it was on forty-two hours, you worked about forty-six and a half to forty-seven?

A That's right.

Q When it was on the forty hour schedule, as you testified, you worked forty-four hours a week?

A That's right.

Q You never received time and a half for overtime?

A I received my straight salary all the time.

Q Do you have the right to hire and fire anybody?

A No.

Q Do you have anyone under you?

A Well—no, I don't presume I do.

Q What is your duty? You just go around adjusting the machines?

A Yes, we have a line of machines to take care of. If anything, you know, changes and breakdowns, why—.

Q You are a mechanic, in other words?

A Well—I am the adjuster.

Q Do you assist anyone, or does anyone assist you, or do you operate by yourself on this machine adjustment?

A No, I do my own work.

MR. SPITZ: No further questions.

CROSS EXAMINATION

BY MR. KURZ:

Q Who is in charge of that department, that you work in?

A Mr. Parrisy; L. L. Parrisy.

Q Are you his assistant?

A Well, I don't know. I might be.

Q When, Mr. Parrisy is away, who is in charge of it?

A Mr. Parrisy is in charge of it.

Q When he is away, who is in charge of it?

A Well, I don't know. He's not ever away.

Q Are you?

A He's there practically all the time.

Q Well, if he is away, who is in charge? Do you know?

A Well, I don't know, unless I am. They never have told me I am, though.

Q Well, who does things and who makes decisions when Mr. Parrisy is away? If anything comes up during that time, do you do that?

A No, I never have.

Q Do you adjust all the machines in the plant?

A Yes, I work on all the machines in the plant.

Q When you work at night, who is in charge? Is Mr. Parrisy there then?

A No, Mr. Parrisy, he is not there in the latter part of the night, but he goes back.

Q Who is in charge of the people doing the adjusting during the time Mr. Parrisy is away?

A Well, I suppose I am. I am classed as head adjuster.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. SPITZ:

Q Do you have the right to hire and fire those gentlemen who are under you?

A No, I don't do that.

MR. SPITZ: That is all.

BY THE COURT:

Q Does your work keep you constantly busy, or do you just have work to do when a machine gets out of fix?

A That's right.

Q How regularly or how often do you have to work on the machines?

A Well, you can't tell about that. Sometimes for two or three days you don't have anything much to do, and then again you just got all you can do for maybe the next two or three days. Just when something happens, or according, you know, to the way they want them changed.

Q You have to change them if they need it?

A Yes, sir, that's right.

BY MR. SPITZ:

Q Mr. Johnson, you are required to be there, though, in case something does happen?

A Oh, yes, sure.

MR. SPITZ: That is all.

MR. KURZ: No further questions.

THE COURT: Come down.

*MR. KURZ: One moment. I believe you made the statement that your hours were forty-nine hours a week before the wage and hour law came into effect, did you not?

A I think so.

MR. KURZ: And shortly after that your hours were changed?

A Yes, sir.

MR. KURZ: To what length of time?

A Changed to forty-four.

Q Forty-four hours?

A That's where we first came down to forty-four.

MR. KURZ: That is all.

BY MR. SPITZ:

Q Did you also state, Mr. Johnson, that when it went to forty-four, that you had to come down on Saturday and work an additional five hours a day?

A I did, myself, but the plant didn't.

Q When the plant went to forty-four, you went on forty-nine; four or five more hours a week?

A I continued to work the same hours, but the plant went to forty-four.

Q The plant went to forty-four, but you continued to work the forty-nine, is that right?

A Yes, sir.

MR. SPITZ: That is all.

(Witness excused)

MR. CHARLES W. SLOCUM,
produced as a witness on behalf of the plaintiff being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Please state your full name.

A Charles Walter Slocum.

Q Mr. Slocum, are you presently employed by the Southern Industries Co.?

A I am.

Q How long have you been employed by the Southern Industries Company?

A Three years, the 12th day of last August.

Q That is about August 12, 1937?

A Yes, sir.

Q Since that time what have your duties been in connection with your employment at Southern Industries?

A Maintaining the factory.

Q What do you mean by maintaining the factory?

A Keeping the repairs of the machines.

Q You are a mechanic?

A Yes, sir.

Q And that has been your duty—?

A Yes, sir.

Q —Since you have been with them?

A Yes, sir.

Q Do you recall what your salary was on or about October 24, 1938?

A Let's see. When I first went there, I went to work fifty cents an hour. Three months, I was raised to fifty-five, and four months they raised me to sixty.

Q Then on or about October 24, 1938, you were getting sixty cents an hour?

A Yes, sir.

Q How long did you continue to receive that rate of pay?

A Up until they put me on the salary.

Q Do you recall when it was?

A No, sir, I can't recall the date.

Q To refresh your memory, was it on or about June 29, 1939?

A It seems like it was around about in the summer time.

Q What salary did they put you on at that time?

A Thirty-two dollars and fifty cents.

Q Subsequent to that time have you received another raise?

A I have.

Q When was that? And what was the amount?

A It was thirty-five, and I think that was somewhere around about—I say about three months ago.

Q Around February?

A It seems like it was about that time.

Q Now, up until you were placed on a salary of \$32.50, which you stated was in the summer of 1939, what were your customary hours of work down at the plant?

A Well, it generally run around sixty-nine hours.

Q Sixty-nine hours?

A Yes, sir.

Q When would you customarily go to work in the morning?

A Well, after—I lived right across the street from the plant. I didn't have no clock when I got up, and I ate my breakfast and went in the shop and went to work. Sometimes half past six, seven, seven thirty, and I gen-

erally worked until eight. I figured on working until eight every night. Sometimes it was later.

Q How long did you take for lunch?

A Oh, some days no time at all; some days thirty minutes.

Q How about Saturday and Sunday?

A Saturday I generally got off about six o'clock, and Sundays I would go off at five.

Q Now, when you were put on the salary of \$32.50, were any reduction made in your hours?

A Yes. In the forty-four hour week I was cut down to forty-four, and then Saturday I had to work an additional four and a half hours.

Q When you speak of the forty-four hour week, you speak of the five day period, is that right?

A That's right.

Q Now, when you say a forty-four hour week, an additional four and a half hours, you mean your week was on the average forty-eight and a half hours?

A That's right.

Q Since that time has there been any further reduction in your hours?

A As the hours dropped down to forty-two hours, then I worked the additional four and a half hours over the forty-two hours.

Q Or forty-six and a half hours?

A That's right.

Q And then when it was reduced to forty?

A Forty-four and a half.

Q And then when it was reduced to forty?

A Forty-four and a half.

Q Mr. Slocum, have you, since October 24, 1938, been paid one and a half times for over time — ?

A No, sir.

Q — For the hours worked?

A No, sir.

Q You have not?

A No, sir.

Q Mr. Slocum, do you have the right to hire or fire anybody?

A No, sir.

Q What are your hours at the present time?

A Forty-four and a half hours.

Q Do you always work forty-four and a half hours?

A Well, I have to work Saturday until noon. That makes forty-four and a half hours. I work the forty hours up until Friday night and I came in Saturday until noon. Go to work seven thirty as a rule. From then until twelve o'clock.

Q Let me ask you this, Mr. Slocum; since you have been on this straight salary, first, thirty-two and a half

and thirty-five dollars, during the period you were getting those respective salaries, you received that salary regardless of the number of hours you worked?

A That's right.

Q Christmas week you got the same salary even though you were off Christmas Day?

A Yes, sir.

Q Mr. Slocum, just before you were raised to thirty-two dollars and fifty cents, did you understand that there had been a change made in your rate?

A Never had been.

Q I mean, were you lead to believe there was?

A No, sir.

Q You do not know anything about that?

A No, there never was, according to the time book, because I kept my helpers time and my time and I checked with the shop book every week to see that the time was correct.

Q No, I think you misunderstand me. You are talking about hours and I am talking about rate of pay. In other words, did you understand there was any change in the rate of your pay? Prior to the time you were raised to thirty-two dollars and fifty cents?

A No, sir. My hours figured out at sixty cents an hour correct. I never had been short.

Q Mr. Slocum, who is your boss?

A Parrisy.

Q Does he exercise control over both you and your helper?

A Yes, sir.

Q I understand that you did not have the right to fire or hire your helpers?

A No, sir.

Q Who has that right?

A Parrisy.

Q And you have never been left in charge of the Department?

A Not only the time when he went to his mother's funeral, was the only time I was left in charge of the machine shop.

Q Was the right to hire or fire left to you?

A No, sir.

MR. SPITZ: That is all. Your witness.

CROSS EXAMINATION

BY MR. KURZ: Q Mr. Slocum, at the time you commenced to receive your straight salary, did anyone tell you that you would receive a straight salary from then on?

A Yes, sir.

Q Did they tell you what your hours would be?

A No, sir.

Q How many helpers do you have?

A Just one.

Q One helper?

A Yes, sir.

Q Do you exercise control over him?

A No, sir.

Q Who does?

A

Q Who tells you where to work and what to do?

A Parrisy gives me all my orders, and if he wants me to give orders to the helpers, he tells me to have the helper go and do a certain job.

MR. KURZ: That is all.

(Witness excused)

MR. EDWARD C. KLEHM,
produced and sworn as a witness on behalf of the plain-
tiff, and testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ: Q Please state your full name.

A Edward C. Klehm.

Q Mr. Klehm, are you presently employed by South-
ern Industries?

A Yes, sir.

Q How long have you been employed by Southern Industries?

A Approximately six years.

Q Have you worked there continuously since that time?

A Yes, sir.

Q What do your duties consist of at Southern Industries?

A Well, I guess I would be considered foreman. In charge of five people out there.

THE COURT: Speak a little louder, please.

A A foreman in charge of five people.

MR. SPITZ: Q What do you do out there, yourself?

A Look after the machines. Watch the plant, keep it running.

Q Do you also operate the printing machine?

A Yes.

Q Who operates the printing machine?

A Well, right now we have a girl on, when we are behind in our orders.

Q Customarily, are you the sole operator of the printing machine out there?

A Yes, sir.

THE COURT: Printing machine?

A Yes, sir.

MR. SPITZ: Q Do you also repair and adjust the machines?

A Yes, sir.

Q What else do you do out there, Mr. Klehm?

A Well, I watch to see that production is made right, and watch all production to see that it is all right.

Q Do you cook the glue?

A I help at it.

Q What was your salary in October, 1935, Mr. Klehm? Do you recall? Approximately?

A No, I don't right now. We haven't any record of it out there. Mr. Thomas there, got all the books at the time.

Q Well, do you recall if it was around twenty-five dollars a week?

A Somewhere around that, yes sir.

Q After that time, were you later raised to around twenty-seven dollars and fifty cents?

A Yes, sir.

Q Now, after Mr. Thomas' inspection, did you receive a raise?

A Yes, sir.

Q What was that raise to?

A Thirty dollars a week.

Q So up until sometime after Mr. Thomas' inspection, you had been receiving less than thirty dollars a week, is that correct?

A That is right.

Q And as far as you know, were any records kept of your hours out there, prior to the inspection?

A Not that I recall. Just the time book went in every night—every Friday.

Q What was your average work week out there, prior to the inspection?

A I don't understand that.

Q How many hours did you average working a week prior to the inspection?

A Around forty-eight, forty-nine, somewhere around there.

Q Forty-eight, forty-nine hours a week?

A Yes, sir.

Q Did you work the same amount of hours every week?

A Approximately, yes.

Q Well, I mean, would that vary an hour one week from another week?

A Yes, sir.

Q There would be a variance. Did you ever receive any overtime for your hours worked over forty-four, during the period from October 24, 1938, to October 24, 1939?

A Just my regular salary.

Q Now, for the period from October 24, 1939 until the inspection, did you receive any additional compensation for hours worked over forty-four?

A No, sir.

Q Now, since the inspection, what are your customary hours of work? How many hours do you work a week?

A Right now around forty-five.

Q Do you receive any additional compensation for the hours over forty that you work each week?

A Just my regular salary.

Q Mr. Klehm, do you do approximately and substantially the same type of work as the employees under you?

MR. KURZ: Objected to as calling for a conclusion.

MR. SPITZ: Your Honor, I think he knows whether he does a substantial amount of work of the same nature.

THE COURT: Overruled.

A What is the question?

MR. SPITZ: Will you read the question, Mr. Reporter.

... The question was read.

A Well, yes and no. There's two answers there.

MR. SPITZ: Q Well, you do the same type of work that some of the employees do under you, in other words?

A Yes, sir.

Q In a substantial amount, I understood?

A Yes, sir.

Q Approximately how many of your working hours each week are spent operating the printing machine, generally and cooking glue and adjusting machines and repairing machines?

A What's that question.

Q Approximately how many hours of your time each week, generally, are spent operating the printing machine or adjusting other machines or cooking glue, or helping out with the other employees on their jobs?

A I don't know how many hours are put on them.

THE COURT: I did not understand you.

A I don't understand.

MR. SPITZ: Do you spend at least half of your time doing that? Running the machines?

A Yes, sir.

MR. SPITZ: That is all.

BY THE COURT: Q Is there anybody else in your department that repairs the machines, but you?

A No, there's another gentleman there.

Q There is another one?

A Yes, sir.

Q One other?

A Yes, sir.

Q You do anything that comes to hand, is that right?

A Yes, sir.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. KURZ:

Q How many people work in the department that you work in?

A There is five on my shift.

Q Who is in charge of those?

A I am.

Q Do you direct them what to do?

A Yes, sir.

Q Who hires them?

A Well, I hire them whenever I need them, or Dempsey hires them whenever he needs them. We generally kind of go together on them.

THE COURT: Q Who is the other man that hires some?

A Mr. Revels.

Q Revels?

A Uh huh.

Q Who is he?

A He is in charge of the night shift.

Q MR. KURZ: Do you have charge of the day shift?

A Yes, sir.

Q Mr. Revels has the same position at night as you have in the day time?

A Yes, sir.

Q How many hours a day would you say you spend operating the printing machine?

A Oh, a couple. About two. It varies so much you can't tell.

Q Where is most of your time spent? In what kind of work?

A Well, the majority of the time is watching machines.

Q Seeing that the machines are working properly?

A Yes, sir.

Q Do you supervise the operators of the machines while you do that?

A Yes, sir.

Q Tell them how to handle it and all that?

A Yes, sir.

MR. KURZ: That is all.

BY THE COURT: Q These five persons that work under you, do they take orders from you?

A Yes, sir.

Q Do you hire them and fire them?

A Yes, sir.

THE COURT: Come down.

MR. KURZ: That is all,

(Witness excused)

MR. W. T. GEOHAGAN,
produced and sworn as a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Please give your full name.

A William Thomas Geohagan.

Q Mr. Geohagan, are you presently employed by the Southern Industries Company?

A Yes, sir.

Q How long have you been employed by Southern Industries?

A I think this coming September will be fifteen years.

Q Have you worked for them since that time?

A Yes.

Q On or about October 24, 1938, what were you employed as?

A Broom maker.

Q How long did you continue to be employed as a broom maker?

A Until Mr. Brenner died.

Q Do you recall when that was?

A It was in January, 1939, I think; along about the 12th: 12th of January.

Q To refresh your memory, wasn't January, 1940, right after this inspection took place?

A That's right.

Q Up to that time you had been a broom maker is that correct?

A Yes, sir.

Q What schedule of hours was observed in the Broom Department from October 24, 1938, until sometime in September, 1939?

A Around fifty-nine hours.

Q Around fifty-nine hours?

A Fifty-nine hours.

Q Or forty-nine?

A We worked nine hours a day five days a week, and then on Saturday.

Q In other words, forty-nine hours a week?

A (No response.)

Q Nine hours a day, five days a week, and four hours on Saturday?

A Nine times five is forty-five.

Q Yes. And are forty-nine?

A Yes, that's right. My mistake.

Q What rate of pay were you receiving during that period, Mr. Geohagan?

A I was a piece worker; making broom at so much a dozen. They vary in price from twenty-five to seventy cents a dozen. I averaged, the year around twenty-five dollars a week. That is, the year around.

Q Now, when you worked those forty-nine and a half hours, for the extra five and a half hours above forty-five, you were paid at the same rate. In other words, you would get the same piece rate?

A That's right, the same price per dozen.

Q Was any additional compensation paid you for those extra hours?

A No, sir.

Q Mr. Geohagan, during that period, from your own

knowledge, do you know of anybody in the broom department receiving time and a half for hours worked over forty-four?

A No, sir.

MR. SPITZ: Your witness.

CROSS EXAMINATION

BY MR. KURZ:

Q You say you were a broom maker up to January, 1940?

A Yes, when Mr. Brenner died.

Q How many hours—when did the plant close during that period of time? During the week-days?

A Before Mr. Brenner died, while I was a broom maker?

Q Yes, while you were a broom maker?

A We went to work at seven thirty and knocked off at five, and at twelve on Saturday. That is—.

Q Did the plant operate on Saturday morning up to January, 1940?

A Yes, sir. Not all of it, part of it.

Q The broom plant operated?

A The broom makers worked.

Q Saturday morning?

A Yes, sir, I have worked on Saturday morning.

MR. KURZ: That is all.

MR. SPITZ: One more question.

MR. KURZ: Pardon me a minute.

Q Did you have any rest periods during the time that you worked there?

A Well, the rest period went into effect after the investigation started.

Q Up to that time, did you work steadily through from the time you started in the morning until you quit?

A Up until that time, yes, we worked right on.

Q How much time did you take off for lunch?

A Half an hour.

Q And except for that half hour, you worked steadily with no rest period?

A No rest period.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. SPITZ:

Q Mr. Geohagan, do you remember an incident which occurred prior to Christmas, 1939, relative to the hours that you should turn in?

A Before Christmas.

Q 1939, yes, when Mr. Brenner was out there?

A That is in the eight cents an hour, yes, sir, I do.

Yes. We worked it and we never turned in any eight cents an hour. We were paid for eight cents an hour on every day we worked, but Mr. Brenner told us not to turn in eight cents an hour for that.

Q What do you mean? He told you not to turn it in for overtime?

A Yes.

Q In other words, you worked over time over forty-two hours, but he told you to turn in only forty-two, is that correct?

A That's right.

Q Who was Brenner?

A He was a foreman.

MR. SPITZ: That is all.

RECROSS EXAMINATION

BY MR. KURZ:

Q Isn't it a fact that you have rest periods now in your department?

A Yes, sir.

Q Didn't you have the same rest period before?

A Yes, before Mr. Brenner died, after the investigation started, we had rest periods, but until that time we never had any. They started them in January. Fifteen minutes four times a day.

Q Isn't it a fact that you took the same rest period before the inspection?

A No, sir.

MR. KURZ: That is all.

(Witness excused)

THE COURT: Gentlemen, we will take a ten minute recess.

... And thereupon an informal recess was had, and thereafter the following further proceedings were had:

MR. KURZ: Your Honor, I would like to recall Mr. Geohagan.

MR. W. T. GEOHAGAN

having been previously sworn as a witness on behalf of the plaintiff, was recalled to the witness stand and further testified as follows:

FURTHER RECROSS EXAMINATION

BY MR. KURZ:

Q Mr. Geohagan, you testified that during the period before Mr. Brenner died, that there were no rest periods. Will you explain what you mean by that?

A Well, there was no real set rest period. We took a rest all right. Caught a drag on a cigarette and drink of water and stood around to give our hands a rest. We paid eight cents an hour for every hour we was there and we was required to be there as many hours as we should be.

Q But you did take a rest?

A Oh, yes, we stopped and got a drink of water. We wasn't there nine hours a day dogging it.

Q How much time would be consumed for those rest periods in the course of a day?

A Oh, well, I would make four dozen brooms and then I would stop and catch a drag, get a drink of water and rest up a few minutes. Four dozen brooms, I could make two dozen an hour and that would be every two hours I would take five or ten minutes to get limbered up and go back, and we were required to be out there nine hours a day and required to pay eight cents an hour for the time we were resting. We paid for that time right on.

Q What do you mean, "paid for it?"

A Oh, we paid eight cents an hour every hour we was on the job.

Q For the use of the machine?

A To get the stuff brought over where we could use it.

Q You mean, paid some helper?

A We paid the company eight cents an hour to hire a man to fix it for us, each broom maker.

Q That was while you were on piece-work basis?

A That's while I was on piece-work, yes, sir.

Q And since January, 1940, there has been a regular set rest period?

A That's right, yes, sir.

Q For how many minutes?

A It started off fifteen minutes, four times a day,

and changed to twenty minutes, four times a day, and now it is half an hour, twice a day. It starts nine thirty to ten o'clock in the morning and from two thirty to three in the afternoon.

Q Is that in order to enable the men at these machines to rest up?

A That's right. To catch the rest and then we make it up by working an hour overtime and sign up like stating we just worked eight hours and we rested the other hour.

Q Eight hours then, is the actual time you worked?

A Now, yes, sir.

Q And the other hour is for the rest period?

A That's right.

Q In the operation of a broom machine, is it necessary to take time out every now and then to rest up?

A Yes, sir, a man couldn't stay there and work steady without taking a rest, because it tires his hands. You are in a strain in this part of your hand, (indicating) and your hands get tired, and naturally you couldn't stay there. Well, you may stay there for awhile, but you wouldn't stay there for long, eight hours a day, without taking a few minutes to rest.

Q Would you say before the rest period was established, the formal rest period was established, that about the same amount of time was taken out for rest by the men?

A Well, according to production, it was just about the same.

Q Are you familiar with the records that were kept in the bag department, prior to Mr. Brenner's death? The Broom Department?

A Am I familiar with them?

Q Yes. That is, the hourly records?

A Yes, sir.

Q The time books?

A Yes, sir.

Q I call your attention to the time book, covering the period from December 8, 1938. Do you know whether Rozier and Johnson and Jenkins and Jackson were working out there at that time?

A Rozier and Johnson?

Q Yes, sir.

A I know Rozier, but I don't recall Jenkins.

Q Do you know Robison?

A Yes, I know Robison.

Q Look at that record. Is that the record that was kept?

A Well, I wouldn't know about that.

Q Do you know whether Mr. Brenner kept the records?

A I never delved into the books at all.

Q You wouldn't know whether that shows any work on Saturday?

A (Examining book) There was no day work, no, but we were there; the broom makers, a lot of times on Saturday, because they got out enough stuff we could work, because they told us it was all right for us to work. Mr. Brenner told us we could put in as many hours as we wanted to, because it was above the minimum and what we made would take care of our overtime. That's the words Mr. Brenner told us. As long as they got stuff for us to work, we worked.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. SPITZ:

Q Now, when you took these so-called rest periods that we are talking about, that was about five or ten minutes at a time. Just long enough to take a drag?

A That's right, five, ten, maybe fifteen minutes.

Q You were talking about paying eight cents an hour to work. Explain that to us, please.

A Well, we have to pay eight cents an hour to get our stuff, the materials cut, and fixed where we could put it into a broom. A broom maker pays eight cents an hour to the company to get that done.

Q You paid the company eight cents an hour to get that done?

A I paid the company eight cents an hour to get that done.

Q You did not pay your helper, then?

A No, sir, I haven't had a helper since this Wage and Hour went into effect. That is, my helper. It was paid through the company.

Q In other words, as I get it, when— This book here that Mr. Kurz showed you, shows forty-seven hours at eight cents?

A That's right, that's the hours worked.

Q Now, Mr. Geohagan, what were those hours based on?

A The hours are put in from the time I came there in the morning until I left at night.

Q In other words, you were paying for each hour you worked?

A That's right; I paid for each hour I was on the job.

Q The company's records showed you worked forty-seven hours for which you paid them three dollars and seventy-six cents?

A That's right, sir. That's how many hours I was on the job.

Q Even taking into consideration these so-called rest periods, when you would take a drag, would you leave the building?

A No, sir, we never left the building. We would stay inside the building.

Q Did you have time enough to leave the building and come back?

A No, sir, we wasn't supposed to leave the building just take a draw and get a drink of water and go back to the machine.

Q And taking all those together, what did the total amount of time amount to over a period of a week?

A You mean the rest period we taken?

Q The so-called rest period?

A I couldn't tell you that.

Q Two or three hours?

A I couldn't tell you how many hours we would take. How many hours we took during a week, I never kept any track of that, but we paid for the time we were resting, right on. We paid eight cents an hour for every hour we was on the job.

Q Mr. Geohagan, besides your regular hours of work, when you were engaged in production there that you talked about, did you do any other work around there like cleaning up, when you finished?

A Yes, sir, we was required to clean up the machine before we left. The trash and all had to be cleaned up around it before we left the building.

Q How many minutes a day would that take?

A Ten or fifteen minutes a day; it had to be cleaned.

Q That was not shown in the hours worked?

A No, sir.

Q That was in addition to these forty-seven hours you worked, in addition?

A That's right. We knocked off fifteen minutes before quitting time and knocked off. We had to have it clean before we closed.

Q That time spent in fixing the machines and cleaning them up was not included in the time for which you paid eight cents an hour?

A No, sir.

Q Mr. Kurz asked you on cross examination about your familiarity with the records that Mr. Brenner kept. During the year 1939, were you also familiar with the system in vogue there of keeping time records on the hourly workers?

A Well, I think, as far as I know, I am carrying out the same plan that he had in the books. What showed on the books, I carried out the same way he carried it.

Q Do you know whether on the books, he carried all the time those men worked?

A No, sir, I don't know that; I don't know what he did about that. I couldn't say.

MR. SPITZ: That is all.

RE-CROSS EXAMINATION

BY MR. KURZ:

Q That forty-seven and a half hours Mr. Spitz inquired about was the total hours that you were at the plant and the rest period was not deducted from it, was it?

A No, sir, that's the total hours we were there. We were on the job then, and if we got them we took them on our own time, which was long enough to get a drink of water and take a few drags on a cigarette and rest up a little bit. But, we couldn't leave the building.

Q I understand that, but you did take those rest periods and the forty-seven hours were the total hours, not deducting the rest period, is that right

A Yes; we paid the eight cents an hour. If we rested an hour, we paid eight cents for it.

Q Answer the question if you can. Those forty-seven and a half hours were the total hours that you were at the plant, is that correct?

A That's the total hours we were at the plant.

Q And in determining that number of hours, you did not make any deduction for rest periods at all?

A Did not make any deduction?

Q Did not make any deduction for rest periods?

A (No response)

Q Let me see if I can explain it to you. You were there forty-seven and a half hours at the plant?

A Yes, sir.

Q And during that forty-seven and a half hours, you did take time out for rest?

A Yes, sir.

Q Who cleans the machines now.

A The day help.

Q Who?

A The day help. The ones we got on—the day labor, they clean it up.

Q At the present time you are on a salary basis?

A I am on a salary. They clean up round the broom maker's machine—.

MR. SPITZ: I object to this line of questioning, it is not in cross of anything brought out on direct. Direct was limited prior to the time, January, 1940.

THE COURT: Overruled.

MR. KURZ: That is all.

RE-REDIRECT EXAMINATION

BY MR. SPITZ:

Q That forty-seven and a half was just an arbitrary figure, wasn't it, Mr. Geohagan? Doesn't this record here show a figure of fifty-two hours?

A We worked all kinds of hours, as far as that goes.

Q Now, to clear up the record, didn't you state to me on redirect examination, and isn't it a fact, that the hours shown there, the forty-seven and a half to which Mr. Kurz had reference, do not include the time spent in cleaning up the machines after you knocked off the machines?

A That's right. If you knocked off—we had to have the machine clean, you see, and if we wanted to get out of there at the regular quitting time, we had to knock off ten or fifteen minutes early to get ready to go. If we didn't—may be we had another dozen we wanted to finish. We had to have the machine clean before we left.

Q Let me ask you this. Was that ten or fifteen minutes spent in cleaning those machines reflected in those hours or was that in addition?

A No, sir, that wasn't reflected in those hours?

Q That is additional to these hours?

A That's additional.

MR. SPITZ: That is all.

RE-RE-CROSS EXAMINATION

BY MR. KURZ:

Q Isn't it a fact that the labor—day labor at that time, cleaned the machines too? Before January, 1940?

A No, sir, not until we went on the schedule of a rest period.

Q In other words after Mr. Brenner died, is that what you mean?

A Well, when we went on the schedule of the rest period, right then is when the day labor cleaned up the machine.

Q Before that time they did not?

A No, sir.

MR. KURZ: That is all.

(Witness excused)

MR. JOE ROBISON,
was produced and sworn as a witness in behalf of the
plaintiff, and testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q State your full name.

A Joseph Robison.

Q Joe, how long have you been working for Southern Industries?

A About three years.

Q About how long?

A About three years.

Q Do you remember about when the Wage and Hour Law became into effect ?

A (No response)

Q Well, to put it differently, what were you making on or about October 24, 1938? What was your rate of pay?

A About twelve dollars a week.

THE COURT: Speak a little louder, so I can hear you.

A About twelve dollars.

Q How much?

A Twelve.

MR. SPITZ: Q How much were you getting an hour?

A I think I was getting twenty-four cents an hour.

THE COURT: I did not hear it.

A I think I was getting twenty-four cents an hour.

MR. SPITZ: Speak louder, Joe, so the Judge can

hear you. How long did you continue to receive twenty-four cents an hour, approximately, after October, 1938?

A About three months later.

Q About three months later? What were your hours of work at that time?

A From seven thirty until five.

Q That was how many days a week?

A That was five days and a half a day on Saturday.

Q Half a day on Saturday?

A Yes, sir.

Q How long did you take for lunch?

A A half an hour.

Q Did you receive any time and a half for the hours worked over forty-four during that period?

A No, I didn't.

Q How long did you continue to work those hours that you just spoke of?

A We continued to work like that until they changed to forty-two hours.

Q Until they changed to forty-two hours?

A Yes, sir.

Q Was that about the time they moved the plant?

A The plant? Right.

Q And during that time, you never received time and a half for over time?

A No, I didn't.

Q Were you raised to twenty-five cents an hour about two or three months after the Act went into effect?

A Yes, I were.

Q Now, I believe you stated that you worked from seven thirty to five with half an hour for lunch. That is nine hours a day for five days a week, and from seven thirty to twelve thirty on Saturday?

A On Saturday.

Q That is fifty hours a week. Now, after you were raised to twenty-five cents an hour, would your pay envelope contain twenty-five cents an hour for that fifty hours?

A Sure Yes, it would.

Q Would it include any additional money for overtime?

A Not any overtime money, no.

Q Well, how did you get your overtime?

A Somebody else's envelope.

Q You mean that your pay envelope would contain eleven dollars. Was that what would be in the envelope?

A That's right.

Q Forty-four hours at twenty-five cents?

A Right.

Q Then the additional six hours that you worked, would be in somebody else's envelope? The money for that?

A Yes.

Q Who told you to go get the money from these other boys?

A The boss.

Q Who was the Boss?

A I. B. Brennan.

Q In other words, you would go to him at the end of the week and he would give you your pay envelope, is that correct?

A That's right.

Q And then he would direct you to go to some other boy and get—?

A Overtime.

Q By "overtime," you mean over time for the straight time hours, is that correct?

A Yes, sir.

Q Do you know some of the boys who used to pay you in that way?

A Yes, I do.

Q Who were they?

A Tommy Rozier, Leon Walker, Elijah Robinson and David Young.

Q Did you ever pay any boys out of your envelope when you didn't work a full week?

A I paid one.

Q Who was that? Do you remember?

A Tommy Rozier.

Q Will you explain to the Court just how that system was worked out there?

A Well, when the Wage and Hour first came in, there were some posters sent around that it didn't take effect on us whatsoever.

Q That it did not take effect on you whatsoever?

A That's right.

Q All right.

A And about three months later, the boss at the present time, I. B. Brennan—

Q Speak up louder.

A I. B. Brennan came around and said Mr. McGehee didn't know that we weren't under the Wage and Hour Law and so it would then go into effect, and from then on, we started making forty-four hours a week. In fact, we made more than forty-four hours, but we didn't get any over time for the hours we made. We would draw it again, through somebody else's envelope.

Q In other words, your envelope would cover forty—

four hours and Mr. Brenner would direct you to someone who had not worked a full week?

A Yes.

Q In other words, if somebody laid off or missed time, your overtime would be in their envelope?

A Yes.

Q And that kept up until you moved to the new plant?

A To the main plant.

Q Now, this overtime pay that you would get out of these other boys envelopes, was twenty-five cents an hour?

A That's right.

Q Was not thirty-seven and a half cents an hour?

A No, it wasn't.

Q In other words, the first year of the Act, you never got over twenty-five cents an hour for any hour you worked?

A Not at all.

Q When did they stop making these adjustments in these pay envelopes? Do you recall?

A No, I don't recall when they started making forty-two hours a week.

Q When they started making forty-two hours a week, that was in October, 1939?

A That's right.

MR. SPITZ: Your witness.

CROSS EXAMINATION

BY MR. KURZ.

Q Who told you about where to get your extra time?

A I. B. Brennan.

Q Where is Mr. Brenner now?

A He's dead.

Q Do you know when he died?

A No, I don't now recollect exactly.

Q What boy did you pay out of your envelope?

A Tommy Rozier.

Q When did you pay him?

A I don't know.

Q How much did you make that week?

A All but about eight hours, I guess.

Q You mean you made less than the forty-four hours?

A That's right.

Q And how much was in your pay envelope?

A Just minus a day's work.

Q For the amount you worked? For the amount of time you worked?

A All except a days' work.

Q Well, was it eleven dollars that you had in your envelope?

A I guess it was about ten dollars, ten dollars and sixty-nine cents, maybe.

THE COURT: Speak louder. I don't hear you.

A About ten dollars and sixty-nine cents.

MR. KURZ: That was for the time that you had worked?

A That's right.

Q And then out of that you paid Rozier?

A Yes, sir.

Q You mean you took your money and paid it to Rozier?

A If I drew a full, he would make my time up. He made my time up.

Q I thought you just said you had ten dollars and something in your envelope?

A After I paid him.

Q Well, you told me though, that that was what there was in your envelope, didn't you?

A After I paid him, that was in the envelope.

Q And how much did you pay him?

A A day's work. I don't know exactly how much.

Q You worked in the broom plant?

A That's right.

Q How many days a week did you work?

A Five days a week, and half a day Saturday.

Q How long did you keep on working on Saturdays? After what time?

A Just about the time we changed to forty-two hours a week.

Q That was in October, 1939?

A That's right.

Q Is that when the broom plant shut down on Saturdays?

A That's right.

Q And before that time, how many hours a week did you work?

A Before that time we would make sometimes as high as sixty hours a week.

Q Did anybody keep a record of your time?

A The Boss.

Q Mr. Brenner?

A Mr. Brenner.

Q When did you start using the time clock out there?

A We started using the time clock when we moved out to the present place now.

Q Do you know when that was?

A I don't know exactly when it was, but it was just before Mr. Brenner died.

Q Was that about a year ago last January?

A I think it was about a year ago.

Q Since that time you have been using the time clock all the time?

A Yes, sir.

Q Since you have been using the time clock, do you get overtime if you work more than the regular hours a week?

A We do.

Q At what rate?

A If we work overtime we get forty-two and a half cents—forty-five cents an hour.

Q Forty-five cents?

A Forty-five cents an hour.

Q Before you moved to this present location, who cleaned up the machines? The broom machines in the plant?

A The broom makers did.

Q You mean you did?

A I don't make brooms. I am a corn sorter.

MR. KURZ: All right.

" (Witness excused)

TOMMIE ROZIER

produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Now, Tommie, talk loud so the Court can hear you. What is your full name?

A Tommie Rozier.

Q Tommie, how long have you been working for Southern Industries Company?

THE COURT: How do you spell that last name?

MR. SPITZ: R-o-z-i-e-r.

MR. SPITZ: Read the last question back to the witness.

... The question was read.

A Ever since 1933.

Q You have been working with them steady since that time?

A I been two or three times off.

THE COURT: How long?

MR. SPITZ: Since 1933.

MR. SPITZ: Q Speak loud so the Court can hear you. What is your job out there?

A Well, I just am a general helper.

Q Speak out.

A General helper; scrape brooms; take them to the stitchers.

THE COURT: Speak up. If you were outside there you could be heard half a mile.

MR. SPITZ: Q Speak loud. Tommie, do you remember back in October, 1938, about the time the Wage and Hour Law came into effect, how much you were getting per hour?

A Twenty-four cents an hour.

Q How long after that did you continue to get this twenty-four cents an hour?

A As far as I can remember, I think two months.

Q What did your salary get raised to then?

A Twenty-five cents an hour.

Q During that first two months did you ever receive time and a half for the hours you worked in excess of forty-four?

A No, sir?

Q About how many hours did you customarily work a week during the first year of the Act?

A Well, sometimes I worked nine and ten. The highest I worked was about twelve hours.

Q A day?

A Yes.

Q You customarily worked nine hours a day, for five days a week?

A Yes, sir.

Q And a half a day on Saturday.

A Yes.

Q During the first year of the Act, at least until the time you moved the plant out to where it is now, which was in September, wasn't it, of 1939?

A I can't just remember.

Q Did you ever receive time and a half for over time?

A No, sir.

Q Did you continue to work approximately forty-nine or fifty hours a week?

A No, sir.

Q What were your hours cut to?

A You mean after the forty-four hours started?

Q Yes—no, after you went under the Act.

A They were forty-four hours a week then.

Q How long after the Act went into effect was it forty-four hours a week?

A About a couple months.

Q Did you ever work over forty-four hours after that?

A No, sir.

Q You did not?

A No, sir.

Q During the first couple months of the Act, you only received twenty-four cents an hour, and you never received time and a half for over time?

A Yes, sir.

Q Do you remember, and as a matter of fact, didn't Mr. Brenner occasionally let you make over time and let you get it out of somebody else's envelope?

A Yes, sir.

Q Then when you said a minute ago you never worked over forty-four hours, you were mistaken, is that correct?

MR. KURZ: Your Honor, I think he is trying to impeach his own witness. It is leading.

MR. SPITZ: Q Don't you remember giving me a statement two or three weeks ago?

A I do.

Q In which this whole matter was discussed?

A Yes, sir.

Q Were the facts that you told me at that time true?

A That's right.

Q Now, do you remember going into the question of Mr. Brenner allowing you to work over time or not allowing you to work over time?

A You mean before the forty-four hours started, or after?

Q Well, when did it start? I think that might have a lot to do with it.

A In October, 1939, I think.

Q That is when it went to forty-two. Let me ask you this: did you ever receive any pay at all out of anybody else's envelope?

A Yes, sir.

Q What was that pay for?

A The over time.

Q Whose envelope did you get it out of?

A Joseph Robison and David Young.

Q Did that happen very frequently?

A A couple of times, I think.

Q Did anybody ever get paid out of your envelope?

A Yes, sir.

Q Was that for hours that they had worked over

forty-four and for hours which you had worked under forty-four?

A That's right.

Q Do you remember when Inspector Thomas came out there?

A Yes, sir.

Q How long before that time did this paying each other out of your respective envelopes take place?

A That were before we moved off of 14th street.

Q Did it continue during the entire time you were on 14th street?

A Yes, sir.

Q After the Act went into effect?

A Yes, sir.

Q In other words up until the time you moved to the new location, you were paying each other out of each other's envelope for over time which was worked?

A Yes, sir.

Q Was that at straight time?

A Yes, sir.

MR. SPITZ: That is all.

CROSS EXAMINATION

BY MR. KURZ:

Q After you moved to this new plant, did you work any more than forty-four hours a week?

A No, sir.

Q That was about two years and a half ago, wasn't it? Two years ago?

A I think so.

Q Do you now punch a time clock?

A Sir?

Q Do you now punch a time clock out there?

A We do punch one, yes, sir.

Q How long have you been doing that?

A I can't remember just how long its been.

Q Well, was it before or after the time Mr. Thomas came out there and made the inspection?

A That were before, I think.

Q Since that time you have been punching the time clock all the time?

A Yes, sir.

Q And you get paid now for time and a half over time if you work more than forty hours?

A Yes, sir.

Q Did you get, last year, when you worked more than forty-two hours, over time pay?

A No, sir. I never worked more than forty-two hours last year.

Q You never worked more than forty-two hours last year?

A No, sir.

Q Did the plant shut down after the forty-two hours was up?

A Sir?

Q Did the plant shut down after the forty-two hours was up?

A No, sir.

Q Did the plant keep on working?

A Yes, sir.

Q What shift were you on?

A See, I worked from 7:30 until four. I work from 7:30 until four now.

Q How long have you been doing that?

A Since the forty hours started.

MR. KURZ: All right, that is all.

(Witness excused)

HENRY McLAURIN

produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Now speak loud so the Court can hear you. Please state your full name.

A Henry McLaurin.

Q Henry, are you employed by Southern Industries?

A Yes, sir.

Q How long have you been working for them?

A Nine years.

Q Do you remember back in October, 1938, about the time the Wage and Hour Law went into effect, what salary you were drawing, or what rate of pay you were being paid on?

A I think we was getting twenty-four cents an hour.

Q Speak up.

A Twenty-four cents an hour, I think.

Q How long after that did you continue to receive twenty-four cents an hour?

A I think about three months later.

Q Then you were raised to twenty-five cents an hour?

A Yes, sir.

Q During those first couple of months did you ever receive time and a half for over time?

A No, sir.

Q During the first year of the Act, that is, from October 24, 1938, to on or about October 24, 1939, what were your customary hours of work per week?

A You mean during that time before the—

Q Before they moved the plant. Do you remember when they moved the plant?

A Yes, sir.

Q About when was that? September or October, 1939?

A I don't know exactly the date.

Q Do you remember the month? Was it in the Fall of 1939?

A To tell the truth, I don't remember. I forgot.

Q What hours were you working?

A Before they got on the Wage and Hour Law, you mean?

Q Yes, if you want to put it that way.

A From 7:30 until five.

Q How many days a week?

A Well, five days and a half a day on Saturday.

Q In other words, about forty-nine and a half or fifty hours a week?

A Yes, and 7:30 to twelve-thirty on Saturday.

Q How long after the Act became effective did you work those hours?

A I don't quite understand you.

Q How long after October, 1938, did you continue to work that schedule of hours? From 7:30 to five, five days a week, and 7:30 to 12:30 on Saturday?

A I think it was a few months after the Wage and Hour Law started, I think. A few months after.

THE COURT: What was the answer?

The answer was read.

A Yes, sir.

MR. SPITZ:

Q Now, after that time, what were your hours reduced to? What hour did you start working then, when your hours were changed?

A Forty-two hours, I think.

Q Henry, did you ever have occasion to pay anybody money out of your envelope?

A No, sir, I didn't pay out.

Q Did anybody ever have occasion to pay you out of their envelope?

A Sure. I received.

Q Did you do that very often?

A I don't know how often it was, but I can tell you who all has paid me.

Q All right, tell me who paid you.

A I received money from Tommie Rozier and David Young, Elijah Robinson and Wellington Rozier.

Q Did you ever get any from Joe Robison?

A I don't remember.

Q What was that money for?

A Over time. Just like he had let us make as much over time—like two or three fellows lay off, and he let us make it up in over time and get it out of their pay.

Q Who was he?

A Mr. Brenner.

Q In other words after you were supposed to have gone under the law, he would let you work over time?

A Yes.

Q Who would tell you to get it from Tommie Rozier at the end of the week?

A Mr. Brenner.

Q How much pay would be in your envelope?

A I think if we make a full week it was—

Q Eleven dollars less Social Security?

A I've forgot now.

Q In other words it was for the forty-four hours, was it?

A Yes, sir.

Q There wasn't any over time in your envelope?

A No, sir, no over time at all.

Q Now, these boys did not hire you to work for them, did they? These boys?

A No, sir.

Q Mr. Brenner would tell you to work the over time?

A Yes, sir.

Q When they would pay you out of their envelopes for over time, what would they pay you? Twenty-five cents, or straight time?

A Yes, straight time.

Q And how long did that keep up? Until the time you all moved out to the new plant?

A Yes, sir.

MR. SPITZ: That is all.

CROSS EXAMINATION

BY MR. KURZ:

Q How often did you get money out of somebody else's envelope?

A I don't know exactly how often I did it.

Q Well, was it once a month?

A I don't remember.

Q Well, was it that often?

A Well, the only time we make over time is when someone lay off, and he let us make that up in over time. I don't know how often it was.

Q How often, altogether, did you receive money like that?

A I don't know. I don't remember.

Q You don't know, you don't have any idea at all how many times?

A No, sir, I don't.

Q Did you say that sometimes Rozier would pay you?

A No, sir, I receive. I never did pay out anything.

Q Had Rozier paid you?

A No, he never paid me—I mean—I received money from different ones.

Q Out of Rozier's envelope?

A Yes, sir.

Q Who gave it to you?

A Rozier.

Q Who else gave you money out of the envelope?

A David Young.

Q Who? David Jones?

A David Young.

Q David Young?

A Yes, sir.

Q How often did you get money from Rozier that way?

A I don't know. I don't remember.

Q Well, was it more than once?

A I think so. I am not sure.

Q How often did David Young pay you?

A I don't remember that.

Q Are you sure it ~~was~~ was more than one time?

A I think so.

Q Well, how many times? Do you have any idea?

A I don't know exactly how many times.

Q Was it more than once?

A I think so.

Q When was the last time you got any money like that?

A I don't remember the time.

Q Well, was it before the plant moved to the new location?

A Yes, it was before the plant moved.

Q About how long before the plant moved?

A I don't know, sir.

Q You remember when you were put on the forty-four hours a week. You remember that, don't you?

A Yes, sir.

Q Back about December, 1938. Is that right?

A I don't remember.

Q Well, how many months after you got the eleven dollars a week in your pay envelope, if you worked a full week, how many months after that did you sometimes get money from some of the other boys?

A I can't remember that, either.

Q You work in the broom department?

A Broom corn sorter, yes, sir.

Q Do you know who cleaned up the broom machine?

A During that time?

Q Yes.

A The broom makers.

Q At the old plant?

A Oh, you mean during that time?

Q Yes.

A The broom makers cleaned up around their machines.

MR. KURZ: All right, that is all.

(Witness excused)

MR. JOHN C. GEOHAGAN
produced as a witness on behalf of the plaintiff, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Please state your full name.

A J. C. Geohagan.

THE COURT: Is there a factual issue on this question.

MR. KURZ: Yes.

THE COURT: Would the weight of the evidence be involved? I do not want to hear purely cumulative evidence unless the weight of the evidence is going to be involved.

MR. SPITZ:

Q How long have you been employed by Southern Industries Company?

A Since 1937.

Q In what capacity have you been employed?

A In what capacity? What do you mean?

Q What job did you have out there?

A Well, I went to work first feeding the broom making machine, and went from there to broom maker.

Q How long have you been a broom maker?

A Well, I don't know just how long I have.

Q Has it been since October 1938?

A Oh, yes.

THE COURT: Mr. Spitz, if you will stand back there about by that table, you may be able to get him to speak loud.

MR. SPITZ:

Q Mr. Geohagan, the first year of the Act, that is, before you moved the plant—do you remember when you moved the plant? When the plant was moved from its first location to where it is presently located?

A I don't remember the date; I remember when it was moved.

Q When was it? The month.

A Well, I don't recall the month that we moved in.

Q Was it the fall of 1939?

A I believe it was.

Q Prior to the date the plant was moved, did you ever pay anybody out of your envelope?

A Yes.

Q Name some of the men you paid out of your pay envelope?

A Fred Higginbottom and George Moore and Ernest Jackson.

Q What was that pay for?

A Well, when they would work over time I would draw their money.

Q Under whose instructions would you draw their money?

A I. B. Brenner.

Q And under the instructions of I. B. Brenner you would pay them off?

A Yes, sir.

Q And that happened up until the time you moved the plant out to the present location, is that right?

A Yes, sir.

Q This over time you would pay them out of your envelope, would that be at straight time of twenty-five cents an hour?

A How is that?

Q What would these payments amount to? Would they be for twenty-five cents an hour?

A Yes, sir.

Q How often did you do that?

A Well, every week.

Q You did that about every week with some of the employees?

-A Yes.

Q And that was done under Mr. Brenner's instructions?

A Yes.

Q And he was the foreman and your boss, is that correct?

A How is that?

Q He was the foreman of that department?

A Yes, superintendent, I think he was.

MR. SPITZ: Your witness.

CROSS EXAMINATION

BY MR. KURZ:

Q Who all did you pay, did you say?

A Fred Higginbotha, G. E. Moore, and Ernest Jackson.. That's some of them. I don't know if that's all of them or not.

Q You paid them out of your envelope?

A Sure.

Q How much was in your envelope?

A Well, I don't know. I didn't keep no track of it.

Q Was there more in your envelope than you had earned?

A Sure there was.

Q How much?

A I don't know.

Q How many times did you pay George Moore?

A I couldn't recall how many times I paid him. I never kept no track of it.

Q Did you pay him once or a dozen times, or how many?

A I don't know. I never kept track of it.

Q How long did you keep that up?

A Until the boss told me to quit. Until he quit, rather.

Q When was that?

A I don't know when it was.

Q Was it before the plant moved to the new location?

A I don't know. Up to the time they moved to the new location.

Q Right up to that time?

A The best I can recall, it was.

Q When did the plant move?

A I don't know. I couldn't call the date.

Q Do you know when Mr. Brenner died?

A Oh, yes.

Q How long before he died was the plant moved?

A I don't know how long it was.

Q When did Mr. Brenner die?

A It seems to me he died around about January or February, somewhere about that.

Q Last year?

A Yes.

Q You don't know how long that was after the plant was moved?

A No, I don't.

Q Did Mr. Brenner give you any reason why you should pay somebody out of your pay envelope?

A No, he never gave me no reason. If I would turn in my time he would come to me Thursday or Friday evening, sometimes Friday and sometimes on Thursday and give me my time sheet, or rather, show it to me and tell me "You have so many hours for this man and so many hours for this man, and you pay them on Friday."

Q You mean you would be shown on the time sheet for more hours than you had actually worked?

A Yes.

Q Do you know if anybody else in the plant knew about that except Mr. Brenner? Any of the bosses?

A I never did inquire and find out anything about it.

Q What were you doing then?

A Making brooms; piece work.

Q What was George Moore doing?

A Well, I think he was bunching brooms.

Q Well, what about Higginbotham?

A He was bunching brooms, too. Labeling and bunching brooms.

Q Did you work on a piece basis at that time?

A Yes.

Q And did you get paid?

A Well, how many dozen brooms I made.

Q Did you have to sign up for that?

A Sign what?

Q Did you have to sign the payroll for what you got?

A Sure.

Q And you signed the payroll for more than you were entitled to?

A I signed the payroll for what he put in my envelope. Signed the payroll for my money.

Q And you knew you had not that much coming to you?

A He wouldn't tell me sometimes until the doggone paymaster came out and gave it to me.

Q What?

A He wouldn't tell me until the paymaster came out and paid me. Under his construction.

Q Under whose construction?

A I. B. Brenner.

Q Did Mr. Brenner pay you, or the paymaster?

A The paymaster.

Q And you would have, in your envelope, more money than was coming to you?

A Sure, I would give it to the other boys that had it coming to them.

Q Mr. Brenner told you to do that?

A Yes, sir.

MR. KURZ: All right. That is all.

THE COURT: Come down.

(Witness excused)

MR. DOWNING: Your Honor, I would like to inquire as to the order of procedure. Mr McGehee and counsel have gone to question these witnesses that have been excused from the stand. Is that in order?

THE COURT: Oh, yes. There isn't any question about that, is there?

MR. DOWNING: I understood they excused the witness after cross examination. It strikes me as being a trifle irregular.

THE COURT: All right, gentlemen, proceed.

MR. JOHN R. THOMAS

having been produced and duly sworn as a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. SPITZ:

Q Please state your full name.

A John R. Thomas.

Q Mr. Thomas, what position do you hold at the present time?

A I am an inspector of the Wage Hour Division, sir.

Q How long have you been an inspector of the Wage Hour Division?

A Approximately two years.

Q In the course of your duties as such Inspector, have you had occasion to inspect the plant of the Jacksonville Paper Company and the Southern Industries Company?

A Yes, sir, I have.

Q When did that inspection take place?

A During the months of December, 1939, and January 1940. Probably a little bit in February.

Q Will you briefly outline for the benefit of the Court, just what your inspection consisted of, and the manner in which it was conducted?

A Well, I started off inspecting the Jacksonville Paper Company, and soon after getting into the Jackson-

ville Paper Company I found out about the branch, as they called it, of Southern Industries. The manufacturing Company. I confined my original inspection to the Jacksonville Paper Company, but in the discussion, several things came up about Southern Industries, so when I had approximately finished with Jacksonville Paper Company, I went into Southern Industries. Even during the time that I was inspecting Jacksonville Paper Company, Mr. Reinohl asked me several questions in connection with the operation of Southern Industries.

Q This is Mr. Reinohl, here?

A That's Mr. Reinohl, yes, I saw, from a couple of things that he had showed me on the payroll of Southern Industries, that apparently there was some violation out there which I called his attention to then, and then I went on out to Southern Industries, and I inspected the time record,—first called for the time record at Southern Industries. The time books. Went over them. I talked to employees. Talked to the foremen. I talked to the supervisor of personnel and certain personnel of the Jacksonville Paper Company who doubled also—also looked out for the business of Southern Industries, including Mr. Reinohl, Mr. Stanton, and so on. In other words, I checked all the records of production which I tried to confirm or deny them by talking to the employees.

Q Now, subsequent to that inspection did you have an opportunity to discuss what you had found, with the person who was pointed out to you as the manager or as the managing head of Southern Industries?

A Yes. After just about completing my inspection of Southern Industries, or at least getting to a point where certain things, I felt, should be either explained, or I should go into them further, one or the other, I approached Mr. Reinohl and Mr. M. R. McGehee and called

to their attention, certain irregularities which I considered to be very serious out there, and they expressed to me surprise that such things had been found, and suggested that they make an appointment with me, with Mr. C. G. McGehee, which they did. They made an appointment with me, the next day, with Mr. C. G. McGehee.

Q Do you recall on what date you fulfilled that appointment?

A To the best of my memory, sir, it was on January 4, 1940.

Q You have refreshed your memory from the file, haven't you?

A I have refreshed my memory from the file and from notes that I made immediately thereafter.

Q Now, who was present at this conference between you and Mr. C. G. McGehee?

A The conference was originally scheduled for Mr. McGehee and myself. When I was waiting for Mr. McGehee, or waiting to get in to see Mr. McGehee, standing outside of a rail there at the foot of the steps, Mr. I. B. Brenner, the superintendent of the Coat Hanger and Broom department came up. Shall I go into—

Q No. Go into the time that you started discussing it with Mr. C. G. McGehee.

A All right. I went in to talk to Mr. McGehee when he called me, and Mr. Brenner came along at the same time. I don't remember exactly whether Mr. Reinohl was that at that particular moment, but he was there very shortly afterward, because Mr. McGehee soon called for him, if he wasn't there. As we walked in I spoke to Mr. McGehee and Mr. Brenner didn't give me much

chance to say anything before he started an outburst of "It's all my fault. The company didn't have a thing to do with it. I did it all. They never did tell me anything about it. It didn't amount to much about it, but I did it. The Government has to get a goat, and I am the Goat", and so on. Mr. McGehee said, "Mr. Brenner, what is the matter; what is this?" He said, "Well, the Government's got to get a goat and they got me." "Well, what does it mean? Quiet down and let us hear about it." So, I explained what I found.

Q Will you explain what you found?

A Well, in connection with Mr. Brenner's remarks, very shortly after the inspection, I found that the records, to my mind, were falsified in his department. That was one of the things I found out. I found out several other things, but one of the things was that,—in order to apparently dodge the payment of over time on certain of his hourly workers, he was hiding their over time in the time of other workers who had not made full time during the week concerned, and having those workers pay off. That is the system which has just been brought out up here. I also found that these workers' hours, when shown, were most times incorrect. I also found that—.

Q What do you mean by "incorrect?"

A Well, in this way. These workers had to pay eight cents an hour to the helpers which were assigned—or rather, pay to the company to be paid to the helpers which were in the division, or in the department there, who sorted corn and so on. Well, naturally, the piece workers were kind of—wanted to keep that eight cents an hour down as low as possible. So they had a reason to keep their hours as low as possible, to keep from being charged as many eight cents as possible. Also, Brenner, certain ones that he liked, apparently, or that he

felt good towards, or he wanted to protect, he would allow them to turn in less hours than they actually worked.

MR. KURZ: Pardon me, your Honor. May I ask a question?

MR. KURZ:

Q You state that you made certain findings. Was that based on records or on conversation?

A Mr. Kurz, it was based on records. It was based on records and conversation. I won't say they were all company records, however.

MR. KURZ: I ask that insofar as the testimony is based on records, it be excluded on the ground the records are the best evidence, and insofar as it is based on conversation, that is purely hearsay and not admissible.

MR. SPITZ: Your Honor, he is relating here, a conversation in detail, that he went into about these different violations with Mr. McGehee, and we shall show that they were admissions made by the agents in the principal's presence at the time of the conversation with Mr. Thomas.

THE COURT: I think if he is undertaking by his testimony to prove violations, that is not the proper way to do it.

MR. SPITZ: We will prove admissions made in his presence and Mr. McGehee's presence by the agent of Southern Industries who was charged with the responsibility of keeping these records.

THE COURT: That may be what you intend to do, but that isn't apparently what the witness is doing.

MR. SPITZ: No. He is relating, and we will show that these people related, when he was present, and admitted those were the facts. He carried on the conversation, and then these agents made the admissions based on the statements as related by Mr. Thomas.

THE COURT: The facts you are relating now, are those the facts you were reporting to Mr. McGehee?

A Those are the facts I was reporting to Mr. McGehee, sir.

Q Are you undertaking to tell part of the conversation between you and Mr. McGehee?

A I am undertaking to do this, sir: I am undertaking to show what I brought out to Mr. McGehee in the presence of Mr. Brenner and Mr. Reinohl, sir.

THE COURT: Very well.

MR. KURZ: I ask then that the witness narrate the conversation he had with Mr. McGehee, rather than what his investigation disclosed.

MR. SPITZ: That is what he is trying to do. He was explaining these things to Mr. McGehee. Of course he has to explain his investigation with it.

THE COURT: Confine the testimony to the discussion with Mr. McGehee.

A I told Mr. McGehee that I had found certain violations out there which I considered to be serious. He apparently did not agree with me. Or, he couldn't believe it, or didn't believe it at the time. He asked me what they were. I brought up this question of paying off—this fact of paying off in other people's envelopes. He asked Mr. Brenner was that so, and Mr. Brenner said, "Yes, it was".

Q Mr. Thomas, slow down a minute, will you. You went into a discussion, though, didn't you, of what happened?

A That's right.

Q You did not say, "The records are inaccurate, isn't that true, Mr. Brenner?" Didn't you actually relate what happened out there?

A I related to Mr. McGehee that I had found the points which I have just brought out awhile ago in connection with the manipulation of hours and paying off in other men's envelopes. I related that to Mr. McGehee.

I also related to Mr. McGehee,—then Mr. McGehee told me, he says, "Well, have you found anything else out there?" I told him that piece workers were not being paid in accordance with the Wage Hour Law. He told me that piece workers were not covered by the Wage Hour Law, that they were all contractors to him. I told him that I disagreed with him; that under our interpretation of the Wage Hour Law, piece workers were covered. He stated to me that he had an opinion from his attorney that piece workers were not covered. I asked Mr. McGehee would he let me see it. He did. He handed me two letters from his attorney, one dated before the effective date of the Act, outlining in general the Act, and its application, and one dated after the effective date of the Act concerning piece workers, and, I believe, certain other employees which, to my mind—my understanding of the letter—told him that piece workers were covered. I called this to his attention and Mr. McGehee said, "The attorney didn't know all the facts in the case, and he still knew they weren't covered.

Q Did Mr. McGehee at any time furnish you with a copy of it?

A I asked Mr. McGehee then for a copy of both letters which he furnished me.

Q Do you have those copies in your file?

A The copies are in my case file.

Q Will you find them for me?

A (Producing papers in file). Do you want me to pull them out?

MR. SPITZ: If you will.

THE COURT: The time to take a recess has about arrived. In the meantime, you can find those Court will recess until two o'clock

(Witness temporarily excused)

And thereupon court adjourned to be reconvened at two o'clock p. m., Wednesday, April 23, 1941.

And at two o'clock p. m., Wednesday, April 23, 1941, court reconvened pursuant to adjournment and the following further proceedings were had.

THE COURT: Proceed.

MR. JOHN R. THOMAS,
having been previously produced and duly sworn as a witness on behalf of the plaintiff, was recalled to the witness stand and further testified as follows:

FURTHER DIRECT EXAMINATION

BY MR. SPITZ:

Q Mr. Thomas, I believe that just before we recessed,

that you had testified that you discussed with Mr. McGehee, the fact that on these piece workers in the broom department, and maybe some of the other departments, that the records kept, were not accurate.

A Correct, sir.

Q And that they had not received time and a half for over time.

A That's right, sir.

Q And you also testified that he referred you to a letter of his attorney.

A Yes, sir.

Q And he furnished you a copy of that letter?

A Yes, sir.

Q I hand you herewith a paper and ask you is that what Mr. McGehee gave you?

A Yes, this is a copy of a letter which Mr. McGehee furnished me.

Q Did Mr. McGehee furnish you the copy?

A Yes.

MR. SPITZ: Plaintiffs offer in evidence copy of this letter from Kay, Ragland & Kurz, addressed to Jacksonville Paper Company, attention Mr. C. G. McGehee, in re, Wage and Hour Law, March 23 1939.

MR. KURZ: Objected to on the grounds it is immaterial and irrelevant and so far no violations are shown that extended to within any reasonable time of the filing of the bill of particulars in this cause and unless con-

nected up in that way to show a willful violation, it is irrelevant.

THE COURT: The question is not whether it is a willful violation, is it?

MR. KURZ: No, sir, it is not a question of willful violation, so I see no relevancy.

MR. SPITZ: This will indicate, your Honor, that even after advice of counsel, piece workers were continued to be paid at straight time, which would indicate the necessity of the injunction.

THE COURT: I will not let it go in. I do not see that it is very material, however. I do not know if you can follow the same identification or exhibit numbers or not. Perhaps it will be well to let these be exhibits A and B.

MR. DOWNING: Has any other exhibit been introduced in evidence, Mr. Reporter?

THE REPORTER: Not in evidence.

THE COURT: This is the first exhibit that has gone in evidence. In order to have confusion about the documents that were identified, avoided, it might be well for the other exhibits to be identified alphabetically.

THE CLERK: I have to have the alphabetical exhibits for the defendant, your Honor.

THE COURT: Defendant's exhibits 1 and 2.

THE CLERK: I am giving 1, 2, 3, and so on, to the plaintiffs' exhibits.

THE COURT: Well, it would be plaintiff's exhibit 1, wouldn't it?

THE CLERK: Yes.

THE COURT: Just any way that you can keep it straight.

The instrument last above referred to was received and filed in evidence and marked Plaintiff's exhibit, Southern Industries No. 1.

MR. SPITZ:

Q Mr. Thomas, will you now proceed with the remaining parts of your discussion with Mr. McGehee, that you were relating?

A I next called, or informed Mr. McGehee—called it to his attention, that I had found evidence that the extra labor vouchers used in conjunction with an employee's regular work during certain weeks, totaled in excess of the statutory minimum—or maximum, without payment of over time. Mr. McGehee appeared surprised at it, and asked Mr. Reinohl if it was so, and Mr. Reinohl and I,—Mr. Reinohl produced records which indicated that it was so. As an example of the type of violation I am thinking of there, I have one particular instance that I have a record of here. It concerns one R. Courtney.

Q Is this the extra labor voucher relating to R. Courtney?

A Yes, sir.

MR. SPITZ: We offer this in evidence.

THE COURT: Is this one of the ones produced by Mr. Reinohl at the conference?

A No, sir, not one produced by Mr. Reinohl.

MR. SPITZ: This is merely an example of the system used, is it, Mr. Thomas?

A Yes, sir.

MR. SPITZ: This is one of those identified on yesterday, your Honor. We offer it as Plaintiff's Exhibit No. 2.

The instrument last above referred to was received and filed in evidence and marked Plaintiff's Exhibit Southern Industries No. 2.

THE COURT: Have you finished with the conference now?

MR. SPITZ: No, sir. He is explaining what he means by that extra labor voucher.

A During that particular week there.

Q I hand you herewith, time book entitled "Bag Factory", identified as Exhibit 6 for identification, and the pages marked "Time Week Ending March 16, 1939", and ask you if this period indicated there is used in connection with the same period as reflected by the extra labor voucher which you just referred to.

A Yes, sir.

Q In view of these two, can you explain to the Court how many hours it is reflected that he worked in that week, from that time book and that extra labor voucher?

A Yes, sir.

Q How many?

A Forty-nine hours.

Q The time book reflects him having worked how many hours and at what rate?

A The time book reflects him as having worked forty-four hours at thirty-five cents an hour.

Q For a total of how much?

A For a total of \$15.40.

Q What does the extra labor voucher show?

A The extra labor voucher shows that he worked five hours at twenty-five cents per hour, or a total of \$1.25.

Q Now let me ask you, Mr. Thomas, further, in connection with Mr. McGehee. Is that typical of the type of violations of that nature which you found?

A That is typical of the type of violations of that nature which I found, and which I discussed with Mr. McGehee.

MR. SPITZ: We also offer in evidence this page of the time book. It has no number on it, but it is marked, "Time Week Ending March 16, 1939".

MR. DOWNING: Just this page.

MR. SPITZ: The one with Courtney's name on it, right here.

The instrument last above referred to was received and filed in evidence and marked Plaintiff's Exhibit Southern Industries No. 3.

MR. SPITZ:

Q You say you discussed that and that was typical of the violations—

THE COURT: Just a moment, Mr. Spitz. May I see the book and see if there is some other way it can be identified?

MR. SPITZ: There are several things in there that we want to identify.

THE COURT: You refer to that as Jacksonville—

MR. SPITZ: Southern Industries Exhibit 3.

THE COURT: You referred to it by the identification number?

MR. SPITZ: Yes. Southern Industries 6. That was the identification number.

THE COURT: Now, this is Southern Industries. If you ever go to make up a record, it is going to be difficult to designate these pages, unless you are going to be careful about the identification numbers.

MR. SPITZ:

Q Will you continue, Mr. Thomas, relative to your discussions with Mr. McGehee at that time?

A I brought these points out to Mr. McGehee. He did not seem to be particularly interested in them. Neither did he—he belittled them to me; that there had been only a very small amount, which I disagreed with him, but which I did not go into—.

MR. KURZ: I object to the witness stating the disagreements and what Mr. McGehee seemed to be. He should confine himself to what was actually said and done.

THE COURT: Yes, objection sustained.

Q Confine yourself to what Mr. McGehee said.

A Mr. McGehee says, "This don't amount to anything. Everybody is satisfied. They have been paid. Nobody is kicking. I am not going to worry about them." So then I went into other—

Q May I interrupt you a moment before you get off of the extra labor vouchers? Was Mr. Reinohl present at that time?

Q Yes, sir.

Q Did Mr. McGehee ask Mr. Reinohl anything about that, to corroborate your statement, or to deny it?

A He asked Mr. Reinohl was that so.

Q And what did Mr. Reinohl say?

A He said, "Yes, it apparently was, from the time books."

Q, Now continue.

A I then took up with Mr. McGehee the minimum wage violations which had been found. Mr. McGehee stated to me that those violations were only during the first part of the Act when,—and that these people were learners and they were no employees, and he didn't consider that he should have to pay none—employees full wages. I asked Mr. McGehee if he had learner's permits for them, and he stated no. I called that violation to his attention and he stated that—I asked him his attitude towards it, and he stated that he had no intention of doing anything about it unless he had to.

Q Did you go into the question with Mr. McGehee

at that time about the salaried employees in the various departments of Southern Industries?

A Yes, sir, I did. I told Mr. McGehee that he had certain salaried employees which apparently he was considering as exempt from the Wage Hour Law, which, under our interpretations, are not exempt.

Q When you refer to "interpretation", are you referring to the regulations issued by the Administrator in pursuance of the Act?

A Yes, sir.

Q Is there anything else that was said at this conference with Mr. McGehee, that you recall?

A In connection with the salaried employees, I explained our position. Mr. McGehee disagreed with me.

Q When you say you explained our position, the position of the Wage and Hour Division, you mean you explained the regulations?

A That's right, sir. I offered to show Mr. McGehee the regulation concerning it, after explaining it, but he told me that he had seen enough of them; that he was familiar with them.

Q Did anything else take place at that time?

A I don't recall anything of any great importance, sir.

Q How long did that conference take?

A It took approximately three hours.

Q Now, returning to the Jacksonville Paper Company as distinguished from the Southern Industries;

when you went down there to examine the records, Mr. Thomas, did you make a partial list of the suppliers of Jacksonville Paper Company and its branches?

A Yes, sir.

Q Is this that list?

A Yes, it is.

Q Is that in your handwriting?

A Yes, in my handwriting.

MR. SPITZ: We offer it in evidence as plaintiff's exhibit, Jacksonville Paper Company No. 1. The basis, your Honor, for this, is to predicate some charts which will be introduced in evidence, on the economic data based on this list.

MR. KURZ: We object to the introduction of the list on the ground that it is admitted here that the large proportion of the merchandise received by Jacksonville Paper Company is received from out of the State. We have also admitted as to certain branches that do an interstate business, and the list of particular suppliers of the persons from whom merchandise is purchased, unduly encumbers the record and tends to prove no issue in the case. It is immaterial and irrelevant.

MR. SPITZ: Your Honor, it is the predicate for introducing a chart which is in the form of a map, which relates the effect on the stream of commerce, for which the government contends in these intrastate branches.

THE COURT: I do not see that it is prejudicial. It might be of benefit.

MR. KURZ: I do not think it is prejudicial.

THE COURT: Objection ~~overruled~~.

The instrument last above referred to was received and filed in evidence and marked Plaintiff's Exhibit Jacksonville Paper Company No. 1.

MR. SPITZ: We excuse Mr. Thomas for the time being, subject to being crossed. We want to introduce these records.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Thomas, in this discussion with Mr. McGehee, was Mr. Reinohl present during all the time?

A I don't believe he was present during the whole. As I remember, very shortly after we got started off, Mr. McGehee called for Mr. Reinohl.

Q Just what did Mr. Brenner state about the record? For instance, about the payments made by one employee to another? Did he particularly mention any employees?

A Yes, sir, he mentioned a particular employee—in connection with the payments of an employee to another, I don't believe he mentioned anything to me at that discussion. He did, previously, but not at that discussion.

Q But not when Mr. McGehee was present?

A I don't believe he did, to any employee, but to me. He admitted it. He said he had done it. He told Mr. McGehee he had done it.

Q Just what words did he use in that?

A He said, "I tried to help some of the boys out.

Some of them were a little short sometimes, and I wanted to—.

Q What did he mean by "a little short"? Did he explain that?

A I don't exactly know what he meant. Maybe he meant that they needed some money. That is what I took it to mean. And he let them work over time. To use his words, as I remember, he says, "Some of the boys were a little short sometimes and came to me and asked me could they work over time and I said, 'well, I can't work you over time, but some of the other boys haven't worked full time, and I will let you work over time and put it in their envelopes for you'". Those are his words.

Q Did he say anything about whether they were piece workers or employees on wages?

A I don't remember that particular angle of it, sir. I do know that most of it concerned hourly workers.

Q Did he mention any names at all?

A I can't recall, sir if he did mention any names. I believe that he did, but I can't recall it, sir.

Q Do you recall that he mentioned a Mr. Covington?

A Yes, he did mention Mr. Covington, but not in that connection.

Q What was his mention of Mr. Covington?

A His mention of Mr. Covington was this: I brought out the fact that piece worker hours were not credited exactly as had been worked. He said, "Yes, I did it for the old man." He talked about Mr. Covington who was a rather elderly man.

Q Mr. Brenner, you mean?

A Yes, Mr. Brenner was talking about Mr. Covington. He said, "Yes, I did it for the old man." He said "The old man was old and he couldn't make his piece work rate, and I decided to make his hours fit the amount of money that he was going to earn, because I knew Mr. McGehee would fire him if he didn't make the piece work rate."

Q Did he mention any apprentice by name, or learner?

A To my knowledge, I don't recall it, sir.

Q Did he mention Geohagan?

A I believe he did mention Geohagan, sir, but I don't know in what connection.

Q Did Mr. Brenner, in Mr. McGehee's presence, make any statement as to how long that had been going on?

A I don't recall that, sir.

Q Did he mention when it had ceased?

A He said then that he had stopped it. He had stopped it then, but I don't believe he mentioned any particular date that he had stopped such practices.

Q In other words, at the time of your investigation, that practice no longer was continued, if I understand you?

A I didn't find any direct evidence of it within the last week.

Q When did you make your investigation?

A In January, sir. In December of 1939 and January of 1940, sir.

THE COURT: The last week. You mean the week before you had this conference.

A Yes, sir.

MR. KURZ:

Q Are you sure that you did find any record of any such practice within a week of the date of the conference?

A No, that wasn't my statement, sir. I said I didn't find any within the past week of that conference, sir.

Q Well, when was the date of the last one you did find?

A Well, I don't believe I could answer that question from here, sir. I don't know. It wasn't—I don't know whether there was any after the movement of the plant to the Evergreen address or not, sir. From here.

Q Do you know when that move took place?

A I believe it occurred sometime around October 1939, sir. I am not sure about that.

Q Isn't a fact that shortly after you had the conference with Mr. McGehee, the piece-workers were placed on the basis under the Wage and Hour Act?

A I am told that happened, sir.

Q Then all of the matters that you have testified about and that occurred, and that you mentioned in this conversation, occurred prior to December, 1939, is that right?

A All of the matters which we discussed on January 4 had occurred previous to that date, sir.

Q And so far as you know, there has been no practice of that kind?

A No, sir, I couldn't say that, sir.

Q Well, do you know of any continuing violations?

A I don't know of my own knowledge, because I wasn't in there to see it.

Q But your testimony is based on something that occurred—?

A My testimony concerning that occurrence refers to things all previous to that date.

Q Isn't it a fact that Mr. McGehee discussed with you the question of rest periods, too?

A Yes, sir. The next day, January 5.

Q Do you know whether or not any effort was made by the Southern Industries Company to comply with your recommendations about rest periods?

A The next day after my conference with Mr. McGehee, he asked me to come in and talk with him about rest periods, and we talked, and in my presence he dictated a letter to Mr. Brenner setting up a rest period system and asked me for an O.K. on it. I informed Mr. McGehee I had no authority to o.k. any particular type or size of rest period and referred him to my supervisor for such.

Q You stated that this extra labor voucher that you identified was typical—

A Yes, sir.

Q Of the practice.

A Yes, sir.

Q How many instances of that kind did you find?

A Innumerable. I wouldn't attempt to count them, sir. I would say more than one hundred and less than a thousand. That's about as close as I could come to it. I spent two weeks going through those.

Q Do you mean to tell me that there could have been as many as a thousand in the course of the period of time that you mentioned?

A No, sir, I didn't say there could have been as many as a thousand. I said less than a thousand and more than a hundred.

Q Would you come closer to that?

A I wouldn't try to state it. I didn't transcribe every one I came to. All I did was to take a sample transcription. The two weeks I spent on it was not totally on that one thing, sir. It was a month that I worked on it in the office.

Q As I understood you to say, that applied only to the employees who were not working in the same capacity, on the extra labor vouchers, is that correct?

A I didn't say that, sir. It applied to both. They were in addition to the employees who worked in a regular department, and after their full week's work, forty-four hours in that department, they were taken in another department on an extra labor voucher during the same week. I found examples of employees who never worked on anything but extra labor vouchers, in the

same department, who worked in excess of statutory hours, on over time, sir.

Q And not carried on the payroll?

A And not carried on the payroll, sir.

Q You said you made a record of some of the extra labor vouchers that you found covering periods of over time work.

A Yes.

Q Do you have that record with you?

A It's part of my case report, sir.

Q Will you refer to that and give us some specific instances?

A William Alexander is the name of a man who never appeared on any regular payroll. He was worked for the week of April 3, 1939, fifty-five hours, on extra labor; paid at straight time, twenty-five cents an hour. Total of \$13.25 he drew that week, less fourteen cents Social Security.

During the week of September 18, the same William Alexander worked fifty-six hours on nothing but extra labor vouchers at twenty-five cents an hour. He was paid \$14.00.

During the week of September 28, or September 29th of the same year, he worked sixty-two hours at straight twenty-five cents per hour.

During the week of October 5 he worked sixty-one hours at twenty-five cents an hour.

During the week of October 19 he worked sixty-one and a half hours.

Q All right.

A During the week of November 11 he worked forty-five and a half hours and eight and a half hours at thirty cents an hour.

During the week of November 23 he worked fifty-one and three quarter hours at thirty cents per hour.

During the week of November 29 he worked forty-seven and three quarter hours at thirty cents per hour.

Sanada Aultman. During the week of October 5, 1939, he worked forty-four hours on his regular week at twenty-five cents per hour, and was paid \$11.00. During the same week, worked five hours on extra labor voucher at twenty-five cents per hour and was paid \$1.25.

Roy Battle. During the week of October 19, 1939, worked forty eight and a half hours on nothing but extra labor vouchers at twenty-five cents per hour. He was paid straight time.

During the week of November 23, worked fifty one and three quarter hours.

During the week of November 29, fifty-four and one quarter hours, straight, at thirty cents.

During the week of December 14, fifty and three quarter hours.

MR. SPITZ:

Q What was the rate of that?

A Thirty cents.

MR. KURZ:

Q What was the last week?

A December 14, fifty and three quarter hours.

Q What other names do you have?

A E. Brooks, R. Brown, and E. F. Bryant.

A Now, this transcript does not always refer to all extra labor vouchers. There may be other violations involved on the same transcript, but this date covered in the transcript here was from May 6, 1939 to December 21, 1939.

On Bryant, it was from April 3, 1939 to December 21, 1939, which, by the way, was the date of inspection. They worked right up to the date of inspection and I don't know as to how long after that this continued.

E. F. Bryant, from September 21, 1939 to—

Q Brenner?

A No, Bryant. B-r-y-a-n-t. From September 21, 1939 to December 14, 1939.

R. Courtney, from December 1, 1938 to October 5, 1939.

C. W. Slocum. The record covers from November 3, 1938 to December 22, 1939.

Q Did you go into all of those with Mr. Brenner in Mr. McGehee's presence?

A No, sir, I did not. That was not what you asked me, sir.

Q No, I just asked you if you did.

A Oh, no.

Eugene Fleming. The record covers from November 3, 1938 through April 13, 1939.

W. C. Hafeld, I have it, October 5, 1939, through November 16 1939.

E. C. Smith, November 3, 1938 through December 7, 1939.

Clarence A. Hitell, from November 3, 1938 through October 5, 1939.

Lester Jenkins, November 3, 1938 through October 5, 1939. Walter Lee, December 1, 1938, through September 28, 1939. H. McLaurin, November 3, 1938, through January 5, 1939. Inez McQuaig, November 3, 1938, through September 28, 1939. J. Robinson, November 3, 1938, through April 6, 1939. Louise Scott.

Q Suppose you check them and give me how many more, by number.

A One more. That is it. Louise Scott. I again say, sir, that this is a sample and is not a complete transcription.

MR. KURZ: I ask that the witness' statement on that be stricken. I asked him for the records that he had.

MR. SPITZ: Your Honor, I think he has a right to explain.

THE COURT: The motion is denied.

MR. KURZ:

Q How many employees were there at the plant at the time you made the examination?

A I would like to have that—.

Q During that period of time.

A I would like to have that file back again, please sir. My records show that there were one hundred and five employees on the regular payroll at the time that I made the inspection.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. SPITZ:

Q From your examination of the records, Mr. Thomas, did the records or these extra labor vouchers, show violations of that nature from the effective date of the Act down to the time of your inspection?

A Yes, sir.

MR. SPITZ: That is all.

(Witness excused)

MR. SPITZ: Your Honor, at this time I would like to introduce some of these exhibits in evidence.

William T. Geohagan, Exhibit identified as Southern Industries No. 11, pages 120, 121, 122, 124, 128, 130, and 132.

MR. KURZ: Objected to on the ground that they are payroll records and that they refer to a period remote from the filing of the bill of complaint. These records I believe, are during the latter part of 1938, and as I understand, they deal only with alleged violations of the overtime requirements of the Act during that period of time.

MR. SPITZ: Your Honor, I do not believe remoteness enters into the question, in view of the authorities; in view of the fact that we have shown by the witnesses that other violations did continue.. This is merely the cumulative effect of all these violations which entitles us to the injunction; that is, on the face of the record, they were violations.

THE COURT: Overruled.

The instruments last above referred to were received and filed in evidence and marked Plaintiff's Exhibits Southern Industries No. 4.

MR. SPITZ: In the same book, also pages on Tommy Rosier; pages 1 to 1—.

MR. SPITZ: Do I understand when a page is in evidence, it will be in evidence as to all employees on that page, or will it be necessary to introduce it as to each employee where there is a violation?

THE COURT: If it is in evidence, it is in evidence.

MR. SPITZ: Yes, but I was wondering if it was limited to a particular employee, or would it speak for all employees on that page?

THE COURT: Are more employees contained on the page?

MR. SPITZ: Yes. For all employees named in the bill of particulars, whose names are on that page.

THE COURT: All right.

MR. SPITZ: Pages numbered 121, 122, 123, 125, 129, 131.

The instruments last above referred to

were received and filed in evidence and marked Plaintiff's Exhibit Southern Industries No. 5.

MR. SPITZ: The next one, identification Exhibit No. 12; pages 10, 12, 14, 15, 18, 19.

THE COURT: Are you offering those pages of identification exhibit 12 now?

MR. SPITZ: Yes, sir.

The instruments last above referred to were received and filed in evidence and marked Plaintiff's Exhibit Southern Industries No. 6.

MR. SPITZ: Your Honor, this is rather bulky and there are three pages in here as to one employee, which we would like to have introduced in evidence without having to break the whole book down. I think I can point out the page and have it marked or have it read into the record, whichever suits counsel.

THE COURT: It would be better if you could stipulate what it shows.

MR. SPITZ: Just this one man here (indicating).

MR. KURZ: Yes. Why not read it into the record?

MR. SPITZ: All right, we will read it into the record. This is apparently for the work week ending April 25, 1940.

THE COURT: What are you reading from?

MR. SPITZ: Reading from Southern Industries factory payroll bearing date January 4, 1940—.

THE COURT: Exhibit what?

MR. SPITZ: Plaintiff's Exhibit Southern Industries for identification.

(Reading) W. Irving, then the printed number 6, and 12.01—12.18, 3.16, blank; the written number eight. All these other numbers are printed. 6.19, with a lot of blanks, with a written number 8, and 6.23, printed; 12.05, printed; 12.15, printed; 3.35, printed. Written, No. 8½, and an 8 with a little 2.

MR. KURZ: I wonder if it would not be more intelligible to put Mr. Thomas on and let him explain what that is.

THE COURT: I am afraid it won't be intelligible in the record.

MR. SPITZ: It is the check in and check out period. It does not show the dates.

A discussion was had off the record.

MR. SPITZ: This is the time clock record of Southern Industries, which is recorded by the punching of a clock in and out, and a part of the record which counsel for both sides have agreed is extended at the end of the week with total number of hours worked and amount paid.

MR. McGEHEE: I think I can explain that if I may.

MR. KURZ: You better wait.

MR. SPITZ: This record for W. Irving shows that during the week ending April 25, 1940, he worked forty-two and a half hours. His hourly rate is not shown. He is shown to have received a weekly salary of twenty-five dollars, less Social Security in the amount of twenty-five cents.

Here is another item of fifty cents, and he was paid a total of \$24.25. The fifty cents represents a cash advance during the week.

THE COURT: Counsel for the defendants agrees that that is correctly—what counsel for the plaintiff has read, is correctly taken from the record?

MR. KURZ: What counsel for the plaintiff has read is correctly taken from the records.

MR. SPITZ: This is the time record sheet for a period ending March 21, 1940, for W. Irving. It shows he worked a total of forty-two hours and a half at a rate of twenty-five dollars a week, less twenty-five cents Social Security, or a total of \$24.75.

MR. KURZ: That is correct.

MR. SPITZ: For the period ending March 7, 1940, it shows that he worked a total—W. Irving worked a total of forty-two and a half hours for twenty-five dollars and received actually \$24.75 after Social Security was deducted.

We would also like to read into the record the week ending March 14th, which shows that the same W. Irving, during that week, worked a total of forty-two hours even, for which he received twenty-five dollars, less twenty-five cents, or a total of \$24.75.

THE COURT: Counsel for the defendant agrees that that is correctly taken from the books?

MR. KURZ: It is all correct your Honor.

MR. SPITZ: That is all, your Honor.

MR. DOWNING: Your Honor, that completes the case on violations of Southern Industries Company.

At this point we would like to call, as an adverse witness under Rule 43-B, Mr. C. G. McGehee, the party, and who is also the managing officer of the Jacksonville Paper Company.

THE COURT: I think we are entitled to take a ten minute recess. The court reporter gets tired. I have been a stenographer once, and I know that.

And thereupon an informal recess was had, following which the follownig further proceedings were had:

MR. SPITZ: Your Honor, I would like to recall Mr. Thomas for a minute; just to clear up something.

MR. JOHN R. THOMAS,

being recalled as a witness on behalf of the planitiff, testified further as follows:

DIRECT EXAMINATION (continued)

BY MR SPITZ:

Q Mr. Thomas, when you were reading all those names off to Mr. Kurz a moment ago, did you intend to indicate that all those people, for that entire period, or during that entire period, there were violations for issuance of extra labor vouchers as to those persons?

A No, sir, I intended to indicate that during the period covered there, there had occurred violations in connection with extra labor vouchers. I tried to explain that all of those, during the whole period, did not necessarily concern extra labor violations, but there were some extra labor violations for all those periods.

Q As to everybody's name you read?

A As to everybody's name I read, except the first two or three which I read, all the way down, as being all extra labor vouchers.

MR. SPITZ: That is all.

THE COURT: What other violations did you have reference to besides extra labor vouchers?

A On these transcripts, sir, I have evidence of minimum wage violations; evidence of other types of overtime violations; evidence of record keeping violations.

THE COURT: You do not mean that extra labor vouchers had been issued to all of those parties?

A Yes, sir, I meant that extra labor vouchers had been issued to all of those parties, but if you will remember, sir, I gave a beginning date and an ending date for each one of them. That covers the period of all violations but in each one of those periods there were some extra labor violations.

THE COURT: Anything further?

MR. KURZ: Nothing further.

(Witness excused)

MR. DOWNING: At this point we would like to call Mr. C. G. McGehee as an adverse party under Rule 43-B.

MR. C. G. McGEHEE,

produced and sworn as a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. DOWNING:

Q Please state your name.

A C. G. McGehee.

Q Mr. McGehee, you are one of the defendants in this case?

A I didn't know it until yesterday. I thought it was Southern Industries and Jacksonville Paper Company. You stated yesterday I was one of them.

Q Are you the President of the Jacksonville Paper Company?

A I am.

Q Is that a corporation?

A Yes, sir.

Q Are you the chief managing officer of that corporation?

A Jacksonville Paper Company?

Q Yes, sir.

A Well, I perform the duties ordinarily performed by a president of a corporation.

Q Do you act as general manager of the business?

A Of certain departments, I do, yes.

Q Are you also in active charge of the management of Southern Industries?

A Yes, sir.

Q Mr. McGehee, in order that the Court may get a picture of the background and development of your com-

pany, I wonder if I might ask you some questions on the history of your organization. When was the Jacksonville Paper Company organized?

A Oh, I think about April or May, 1919.

Q 1919?

A Yes, sir.

Q Did it at that time have any branches?

A No, sir.

Q The entire business was conducted here in Jacksonville?

A That is correct.

Q Did it then have any manufacturing department?

A No, sir.

Q When did the manufacturing department originate?

A Jacksonville Paper Company hasn't had any manufacturing department.

Q It has never at any time since 1919 had a manufacturing department?

A Now, I may correct that. I believe they did, at first, and then they sold it to Southern Industries about a year after it was established.

Q How long was the manufacturing department owned by the Jacksonville Paper Company?

A For about the first year of its existence.

Q When was that?

A I don't know, Mr. Downing.

Q Was it in 1936?

A That Jacksonville Paper Company sold it?

Q Yes.

A I would say 1935 or 1936, somewhere around that.

Q Before that, do I understand that for a period of approximately a year, it was operated as a unit of Jacksonville Paper Company?

A That is correct, yes, sir.

Q During the time the company had no branches, did it serve the same territory as it serves now?

A No, sir.

Q Did it serve the territory in the immediate vicinity of Jacksonville only?

A Well, we covered the State of Florida, east of Marianna, Florida, if I remember correctly, and south Georgia during the beginning.

Q How far into South Florida did you cover?

A Down to Key West.

Q The entire state?

A Yes everything east of Marianna, if I remember correctly.

Q When the business was one unit, did your sales

organization and your distribution activities cover that entire territory from Jacksonville?

A Yes, sir.

Q What was the occasion for the opening of the branches, Mr. McGehee, or the new outlets?

MR. KURZ: Your Honor, I do not see the relevancy of going into this in detail, and I object to it on that ground.

MR. DOWNING: Your Honor, I am only attempting to show the background and development of the business. It is actually in the nature of the background of the business, to show the growth and development of the company to its present prominence in the field of wholesale distribution in this section and also to show the question of coverage at interstate branches. The manner in which they developed will indicate the extent to which they are covered by the act.

THE COURT: I do not see any use in going into it back of October, 1938.

MR. DOWNING: It is only, your Honor, to show how the company's business developed and to show how interstate commerce has spread through these branches or distributive chains; through the growth of the business.

THE COURT: I do not see the relevancy of it prior to 1938, and I sustain the objection.

MR. DOWNING: May we proffer the testimony, your Honor, as a proffer of proof? Under the rules, as I understand it, a case tried by the Court without a jury, the Court may have the testimony taken as a proffer of proof.

THE COURT: You mean as a proffer?

MR. DOWNING: Your Honor, since this is an adverse witness and more or less investigative of new facts, we are not in position to state entirely what may be developed, except that it will develop generally the growth of the business and the development of this corporation to its present position; to a prominent position in the wholesale field in this territory.

THE COURT: You are just interrogating this witness? A fishing interrogation? You do not know what you want to prove?

MR. DOWNING: Only to develop the growth and expansion of the business, your Honor. We simply wish to do it for that purpose and to demonstrate how interstate commerce has been facilitated by the development of this concern; this integrated concern, which has developed now into fourteen units.

THE COURT: I sustain the objection. If you will state that you propose to show the development and growth of this corporation by the witness from the beginning to now, you can state that in your proffer of proof.

MR. DOWNING: That is what I propose to proffer.

THE COURT: Let it be shown that the witness offers testimony to that effect. The Court holds that we are not interested in the events prior to the effective date of the Act; Fair Labor Standards Act. What branches they have now, what the business relationship between the two companies is now, since October, 1938, and how they did business, I see no necessity of going into the history prior to that time.

MR. DOWNING: We also propose to show by this proffer of testimony how interstate commerce has been facilitated through the development of this organization to its present stature, and to the magnitude of the branches.

THE COURT: You can show what business the companies do, what branches they have and how that affects interstate commerce if you want to, but I am not interested in anything prior to the date of the Act.

BY MR. DOWNING:

Q Where is your main office, Mr. McGehee?

A On West Bay Street, in Jacksonville.

Q Is your main warehouse also located there?

A Well, it doesn't exceed in prominence any of the others; any of the large ones.

Q You mean the business done in that warehouse, in its own trade territory, does not exceed that in some of your branches?

A Well, it probably does a little more business than the others, but not a great deal.

Q How much does it exceed the business, for instance, done by the Tampa branch?

A About fifteen or eighteen per cent I would say. I am not positive. In that neighborhood.

Q And by the same proportion, it exceeds the business done by the Miami branch?

A Yes, about approximately that. I don't recall just exactly.

Q Will you state for the information of the Court the location of your various branches and their various trade names?

A Jacksonville Paper Company, Jacksonville, Florida; Everglades Paper Company, Miami. East Coast Paper

Company, West Palm Beach.. Tampa Paper Company, Tampa, Florida. Pinellas Paper Company, St. Petersburg. Lakeland Paper Company, Lakeland, Florida. Central Paper Company, Orlando, Florida. Daytona Paper Company, Daytona, Florida. Capitol Paper Company, Tallahassee. Pensacola Paper Company, Pensacola. Partin Paper Company, Mobile. Macon Paper Company, Macon, Georgia. Atlantic Paper Company, Savannah, Georgia. Florida Paper Company, Jacksonville, Florida.

Q Did you mention the new branch organized at Daytona?

A Yes, sir.

Q When was that branch organized?

A About the 1st of January, 1941.

Q That was the last one of your branches?

A Yes.

Q As I understand it, Mr. McGehee, it is now conceded by the defendant Jacksonville Paper Company that it has been continuously engaged in interstate commerce since October 24, 1938, at its following places of business:

Jacksonville Paper Company, at Jacksonville.

Florida Paper Company, at Jacksonville.

Capitol Paper Company, at Tallahassee.

Pensacola Paper Company, at Pensacola.

The Partin Paper Company, at Mobile, and The Atlantic Paper Company at Savannah.?

MR. KURZ: I object to that question on the ground that the admissions of record are in the record, and the question propounded to the witness, for that reason, is merely something that is formally already in the record.

THE COURT: I think that is correct.

MR. DOWNING: Is any admission made, Mr. McGehee, as to the Tampa branch having been engaged in interstate commerce?

MR. KURZ: Your Honor, I think the admissions that were made at the pre-trial conference and in the interrogatories and so forth are the best evidence, and that the witness on the stand should not be asked as to what admissions have been made in the past.

THE COURT: I do not understand the question. What was the question?

Question read.

MR. DOWNING:

Q And has continued since October, 1938?

THE COURT: Is that one of the branches in dispute?

MR. DOWNING: I am simply asking is an admission made by this witness as chief executive officer of the company and general manager.

MR. KURZ: It calls for a conclusion of law of the witness, as to whether the branches are engaged in interstate commerce or not. You can ask him as to the facts.

THE COURT: I think that is a question calling for a conclusion of law and I shall sustain the objection.

MR. DOWNING:

Q When was the Tampa branch organized, Mr. McGehee?

A I would say about fifteen years ago. I don't recall.

Q At that time was there a branch at St. Petersburg or Lakeland?

A No, sir.

Q Or at Orlando?

A No—.

MR. KURZ: I object to the question. It seems to be based on the same theory that the witness was first interrogated about, formerly; something that happened long before the Act became effective

MR. DOWNING: Your Honor, I simply inquired of the witness the date the Tampa branch was organized and whether there were other surrounding branches in that territory. As I understand his answer, he said: no.

THE COURT: I do not see the relevancy, Mr. Downing. What is the relevancy?

MR. DOWNING: It indicates the method by which this company expanded in its trade territory.

THE COURT: Objection sustained.

MR. DOWNING:

Q When was the Miami branch organized, Mr. McGehee?

A Oh, a year or two before Tampa; possibly seventeen years ago, I don't recall.

Q When was the West Palm Beach branch organized?

MR. KURZ: Your Honor, it seems to me that counsel is trying to accomplish by indirection the things your Honor has already ruled on. The pleadings in this case—

THE COURT: If they have some relevancy as to whether these concerns were in operation at the time the Wage and Hour law went into effect.

MR. KURZ: It is shown in the bill of complaint and answer as to what branches were in operation at the time, and it is just encumbering the record and taking up unnecessary time. The witness can state, when asked, what branches were open on October 24th.

THE COURT: I will let him answer the question.

THE WITNESS: Will you let me have the question, Mr. Halter?

Q (The question was read).

A Oh, I suppose—I would say about twelve years ago; I don't recall exactly. They opened up at intervals.

Q Before the effective date of the Wage Hour Act?

A All of them except Daytona.

Q How old is the branch at Macon? Was that in operation at the time of the Wage Hour Act?

A Yes, sir. I am not positive about that. We bought the Macon Paper Company.

Q I was just going to ask you about that. Was it not at one time owned by a separate owner?

A Yes, we bought Macon Paper Company, but I don't recall whether it was prior to October, 1938, or after that.

Q Was it prior to that time owned by Mr. J. T. McGehee?

A He owned the control, but did not own it all.

Q Is the Macon branch now operated as a separate corporation?

A No, sir.

A Is it simply another trade name which you use?

A Yes, sir.

Q Are any of your branches operated as separate corporations?

A No, sir.

Q They are all simply under trade names?

A Such as Jacksonville Paper Company. We gave them a local trade name, local name to localize them.

Q Why did you give them separate names?

A I just told you; to localize them as far as possible.

Q Were their accounts billed under their trade names, or the trade name of Jacksonville Paper Company?

MR. KURZ: I do not see the relevancy of that. I hate to object all the time, but it is entirely irrelevant to the inquiry before the Court.

THE COURT: Objection overruled.

A What was the question?

Q (Question read).

A What type of accounts do you have reference to?

Q Accounts receivable.

A The accounts receivable, the invoices are all printed in the trade name.

Q The name of the particular branch?

A Yes, sir.

Q All billing is done in the trade name?

A Well, that is what you asked me a moment ago, didn't you?

Q I asked you about accounts receivable.

A The accounts receivable are the accounts they render invoices on.

Q Will you state, Mr. McGehee, the extent of control, managerial, accounting and otherwise, which is exerted by the main office,—main organization, over the operation of the branches?

A Over the operation of the branches?

Q Yes.

A Well, each branch house is a separate entity. It has its complete personnel; a manager, who manages it, with the exception of two, I think, that have their accounting departments and credit departments, and do their own invoicing and collect their accounts receivable.

Q Which two are they?

A Lakeland and Daytona. They are very small operations.

Q Is Lakeland, in effect, a part of the Tampa branch?

A Yes, sir.

Q It operates as a part of the Tampa branch, as I understand it?

A That's correct.

Q To what extent are the policies of the branches controlled by the head office in Jacksonville?

A The policies are dictated by the head office in Jacksonville.

Q What accounting control is exerted by the office here over the branches?

A I think Mr. Reinohl can answer that better than better than I can. He is more familiar with the details, or Mr. M. R. McGehee.

Q You indicated the branches kept their own accounts receivable?

A That is correct.

Q Is that true of accounts payable?

A No, sir, they do not keep the accounts payable.

Q Are they kept in the office here?

A All the purchasing is done in Jacksonville, and all bills are paid in Jacksonville by Jacksonville Paper Company. All merchandise billed to Jacksonville Paper Company.

Q All stocks of goods ordered for the branches are billed to the Jacksonville main office, aren't they?

A Billed to Jacksonville, and paid by Jacksonville main office.

Q Why are not the branches permitted to place their own orders?

A Well, the branches are not permitted to place their own orders for the simple reason that there is considerable advantage in the power afforded by the combination of purchasing.

Q The pooling of the purchasing power?

A That is correct.

Q Does the Jacksonville office keep all of the payroll records for the branches?

A You better ask Mr. Reinohl and Mr. M. R. McGehee about that. I am not familiar with that accounting, the details of it.

Q You do not know of your own knowledge that the payrolls are made up here?

A My impression is that they are; there may be some exceptions. In fact I know there are some extra laborers that are paid in the warehouses.

Q Generally it is your understanding that the payroll records are prepared in Jacksonville for all of the branches?

A That is my impression, yes, sir.

Q Who pays the various overhead charges on the branches, such as rent?

A Who pays them?

Q Is it paid by the branch itself, or by the main office in Jacksonville?

A You better ask them about that.

Q You do not know that of your own knowledge?

A No, sir.

Q In getting up the payrolls for the branches, do you know whether the money is sent—transmitted from Jacksonville to the branch for the purpose of paying off the employees?

A Why, I think they send them a check for the lump sum and the check is cashed and the cashier or office manager in the branch, I think, has the check cashed and pays the employees in cash. I am not positive about that.

Q Do the branches remit or transmit to the home office their collections on the accounts receivable?

A Well, you better ask Mr. M. R. McGehee, the Treasurer how that is handled.

Q You are not familiar with how that is handled?

A In a general way, but some warehouses do it one way and some another and I don't know which is which and the details of it.

Q In a general way do the branches operate as an entity on financial matters?

A You mean finance themselves and borrow money and so forth?

Q No, in the payment of their employees, collection

of accounts receivable, purchase of raw materials or stocks of goods—?

A None of them purchase their stocks of goods, no, sir. They pay their employees.

Q Generally, on the accounts receivable, as I understand it, it is your policy to permit the branches to do their own billing; it is also your policy to permit them to collect their own accounts?

A Yes, they all have the personal ledgers down there and collect their own accounts.

Q Do they make their own sales?

A Yes, they make their own sales. Have their own sales organizations.

Q Mr. McGehee, taking the Macon branch as a typical set-up, describe how the various controls, operated by the main office, is operated there.

A What do you mean by "various controls"?

Q Let us take purchasing control. How do you control the purchase of materials, or stocks of goods for that branch?

A Well, they are supplied with requisition forms and they requisition Jacksonville for their supplies.

Q What happens then?

A The Jacksonville Paper Company places the orders with the various mills for the orders.

Q What employees in your organization handle the placing of those orders?

A Mr. Graham handles wrapping papers, and Mr. Ross printing papers.

Q That is Mr. H. D. Graham?

A Yes, sir.

Q Is he the purchasing agent for the coarse paper department?

A He has a secretary that types all the matter for him, and he looks it over and initials it and sends it to the mill.

Q Is he also in charge of the sales organization of the coarse paper department?

A Well, under my supervision, yes, sir.

Q Does Mr. Ross hold a corresponding position in the fine paper department?

A No, sir.

Q What position does he hold in the fine paper division?

A Mr. Ross handles the requisitions as they come in from the warehouses, just as Mr. Graham does, but Mr. Adkins has jurisdiction of sales in the printing department.

K When was Mr. Adkins placed in charge of sales of the fine paper division?

A Four or five years ago.

Q Where is he located, Mr. McGehee?

A Here in Jacksonville.

Q Do you also have a Mr. Adkins in your organization at Tampa, Florida?

A A brother to the one here.

Q Now, when the requisitions come in from the Macon Branch, will you describe how they are handled here?

A They will go to Mr. Graham's desk and he instructs his secretary as to who wants them sent to, and she types them and mails them.

Q Who selects the manufacturer with whom the order is to be placed?

A Well, in the ordinary course of business, Mr. Graham does. If it is something very unusual and there is considerable involved, he will consult me about it.

Q Are there on occasion a number of manufacturers who might supply you with a particular item?

A You mean with the same item?

Q Ycs.

A Oh, yes.

Q Does Mr. Graham make the selection as to which of those the order is to be placed with?

A As a rule, yes, sir.

Q Does Mr. Graham also do the ordering for the coarse paper sales locally? In the coarse paper department locally?

A Oh, yes; yes, he handles it all in the same fashion.

Q Will you state who, in the Macon branch keeps track of the stock there and places requisitions, prepares requisitions on the home office?

A Well, the manager is charged with that responsibility. I don't know that he does the details.

Q That is Mr. T. J. McGehee?

A Well, in Macon it happens to be J. T. McGehee, yes, sir.

Q What employee under his supervision will he probably delegate to that duty to?

A The secretary. She copies the requisitions as he gives them to her. They come into Jacksonville, I presume; I am not there. But they are typed, and I suppose she does it.

Q Would the shipping clerk in the coarse paper division and the fine paper division there keep the manager apprised of the state of the stock in particular lines, and the necessity for reordering?

A No, we keep a perpetual inventory on printing paper in those warehouses. They are governed largely by the perpetual inventory. That is developed by the perpetual inventory. Wrapping paper, the branch managers are supposed to go through the warehouse stock once a week and make their list and mail requisitions to the office.

Q, You mentioned perpetual inventory in the fine paper department. Is that kept under the supervision of Mr. Ross here?

A Well, we have a duplicate perpetual inventory in printing papers. We have a perpetual inventory in the branches and a perpetual inventory in Jacksonville that we keep on them as well.

Q And the one kept here is under the supervision of Mr. Ross?

A Well, indirectly. I think Mr. Corbett actually does the work.

Q Does Mr. Ross place orders for the branches in advance of receipt of requisitions from them?

MR. KURZ: Objected to on the ground this line of questioning is immaterial and irrelevant. Details of the inter-company handling of affairs seems to be very remotely connected with any issue in this case.

THE COURT: It is hard to say. I will let it go in.

A What was the question, Mr. Halter?

Q (Question read).

A No, sir, not that I know of. He should not, if he does. He wouldn't if I find it out.

Q In other words, he—strike that, Mr. Reporter. In other words, regardless of what the local perpetual inventory may show, he awaits receipt of a requisition from the branch before placing an order?

A Yes, sir.

Q Does he make a periodic check on the perpetual inventory for the various branches?

A No, sir.

Q Does the perpetual inventory kept here reflect the state of the inventory in the various branches?

A As near as any record of that character would, I think, yes.

Q Are you familiar, Mr. McGehee, with the manner in which Mr. Corbett or Mr. Ross keeps that inventory posted?

A Why, Ross doesn't post it. Corbett posts it.

Q Are you familiar with the manner in which it is posted?

A In a general way, yes, sir.

Q Is it posted from invoices, sales invoices received from the branches?

A Our branch houses send the Jacksonville office a copy of the invoices issued, and the invoices are credited from the copies of those invoices.

Q In other words, a deduction is made from the amount of goods on the individual invoices as they come in?

Yes.

Q Is a similar inventory kept in the coarse paper department?

A Well, we keep an inventory of the coarse paper operation in Jacksonville only. We don't keep that in the warehouse. We keep that more to prevent theft; keep a record of the stock.

Q Is there any perpetual cardex index kept in the coarse paper department here?

A This is a perpetual inventory, yes.

Q Do you have a cardex for the coarse paper department as well as the fine paper department?

A I don't believe it's a cardex. I think it's some other system. I do not know positively. Mr. Reinohl will know. It is a perpetual inventory.

Q Does the Jacksonville office stay in daily contact with the Macon branch?

A Does the Jacksonville office stay in daily contact with the Macon Branch?

Q Yes.

A We get orders from them every day, unless the mail mis-carries.

Q Do you correspond with that branch every day?

A I suppose so, pretty nearly. There are very few days that there would not be something.

Q Do you receive orders from its practically every day, requisitions?

A No, I don't think we receive orders every day. Those orders usually come in once a week, as a rule. They don't spend all of that week to order merchandise.

Q In case they should run out of a particular article during that time, would that order be placed with you?

A Yes, sir.

Q How often would they be placed with you, do you know?

A No, I don't recall that.

Q Are you in communication with that branch by wire or telephone?

A Sometimes. Possibly I might telephone them once in three months, maybe.

Q In case of an emergency order or rush order, would that be transmitted by telephone or by wire from Macon?

A Well, possibly it would sometimes. I don't handle those orders, anyway.

Q Does the Jacksonville warehouse here ever ship direct to any customer of the Macon branch?

A Any customer of the Macon branch?

Q Yes.

A If they do, we will ship it from Jacksonville.

Q That is not the question. I inquired if there were in fact any such shipments to customers of the Macon branch.

A We probably do ship some stuff to the Macon branch—I mean to Macon customers. I imagine we do. I haven't examined the records, but I say off-hand we do.

Q Is that a regular occurrence?

A Well, we might have them once in three months, something like that. I don't know just what you mean, a regular occurrence.

Q Are the orders for those shipments taken in Macon?

A Are the orders for what?

Q Those shipments which are made direct by the Jacksonville office or warehouse, are they orders which have been taken in Macon?

A I don't know whether they come from Macon or some direct, Mr. Downing. I don't recall. In fact, I don't recall anything like that. But I know it could happen.

Q Who would know about that?

A I suppose our record would reflect that. We could look through the records and find out if we did that or not.

Q Do you know what record would reflect that?

A Why, yes, if we have any accounts against the consignee in Macon territory, it would.

Q Generally, does the main office deal direct with cus-

tomers of branches, except in response to a request from the branch?

A No, not often.

Q So from that is it your conclusion that if shipments have in fact been made to Macon customers, it would have been on the order of the Macon branch?

MR. KURZ: I object to that because what the conclusion of the witness as to that would be, it would be irrelevant.

THE COURT: Yes, sustained.

MR. DOWNING: Q Well, is it a fact that the only shipments which the Jacksonville warehouse would make to a Macon customer would be as a result of an order from the Macon branch?

THE COURT: I think the witness said, Mr. Downing, he did not recall there had been any such shipments. You will have to find out from somebody else.

Q Is it ever customary for the Jacksonville Office to hire employees for any of the branches.

A I can't recall of anything like that, that has been done. It may have been. I don't know.

Q Is that a matter that is usually entrusted to the local Branch Manager?

A Yes, we prefer local people. We find they are much more satisfactory, because, in the first place, they are acclimated and have their friends there.

Q In hiring the personnel then, I take it from your testimony that is a matter which is delegated to the Local Branch Manager?

A The Manager or the Cashier, depending upon the department involved.

Q When an order is received from the Macon Office,—a requisition, rather, I believe you call it—is the Macon Branch notified by the Jacksonville Office of the placing of the order?

A They get a copy of the order from the mill.

Q They get a copy of the order from the mill that the Jacksonville Office places with the out of state manufacturer?

A Well, if it happens to be an out of state manufacturer, yes.

Q What local manufacturers,—by that I mean, what Florida manufacturers supply you with merchandise?

A Oh, they buy some little stuff around town. I think some ink, possibly or some type wash, or something like that.

Q Just minor items?

A Yes, sir.

Q And of course, a portion of the products manufactured by Southern Industries would be distributed through the Macon Branch, would they not, Mr. McGehee?

A Well, Jacksonville Paper Company sells quite a lot of Southern Industries Products to Macon Paper Company.

Q Does the Macon Paper Company Branch distribute a portion of those?

A Yes, sir.

Q Does it handle, generally, about the same proportion of products of Southern Industries as do the other branches?

A No. More than some of them and less than some of them.

Q I mean, in proportion to size?

A Oh, yes, I should think so.

Q In proportion to the business? In proportion to the size of the business?

A You mean the percentage?

Q Yes.

A I think about the same.

Q When the out of state manufacturer receives the order which is placed through the Jacksonville Paper Company for a shipment to, say the Macon Branch, is any acknowledgement of that order transmitted from the manufacturer, or by the manufacturer?

A We usually get an acknowledgement. I do not say always, but as a rule, we do.

Q It is customary to get an acknowledgement, is it not?

A Yes, sir.

Q Does that come to the Jacksonville Office?

A It comes to the Jacksonville Office, yes, sir.

Q Is a copy of that sent to the Macon Branch?

A No, sir.

Q Your branches then, do not receive copies of acknowledgements of their order from the manufacturer?

A No, sir—yes, they receive a copy of the acknowledgement from us. They order from us and we give them a copy of our order.

Q You send your branch a copy of your order to the manufacturer?

A That's right.

Q Do the branches receive copies of the acknowledgement of the order by the manufacturer?

A You mean copy of the acknowledgement of the manufacturer direct to the Branch?

Q Yes.

A No, sir, to the Jacksonville Paper Company.

Q After the Jacksonville Paper Company receives an acknowledgement of the order for the Branch, is the Branch notified?

A If there is anything unusual about it and they write in the acknowledgement, that some item, the size is improperly specified, the Branch would be consulted, yes.

Q When the goods are received by the Branch—let us still continue, for example, with the Macon Branch. Is any information transmitted by the Branch to your home office of the receipt of the goods?

A Yes, sir.

Q What notice is given you of the receipts of the goods?

A You are getting into details which Mr. Reinohl, and which Mr. M. R. McGehee will have to give you. I know they report it, but what they get, I don't know.

Q Generally, is it customary for the manufacturer to ship direct to the Branch?

A If we instruct him, he does.

Q Well, in the case of the Macon Branch, are the goods ever shipped first to Jacksonville and then back to Macon?

A No, sir, not directly from the manufacturer, no; unless there is some mistake made by the manufacturer.

Q Generally, do I understand then, in your orders for the Macon Branch, at least, that it is customary to order shipments direct to the Macon Branch at Macon?

A That is correct.

Q Suppose, Mr. McGehee, there is some delay in the shipment of the goods, either at the manufacturing end or after they get in transit. Does the Branch ever follow that up?

A Through our office, they would.

Q In other words, the Macon Branch would communicate with you in Jacksonville?

A Yes, sir.

Q The Jacksonville Office.

Q By letter or wire?

A It depends upon the urgency of the situation. Sometimes wire, sometimes letter.

Q Do they ever use the telephone to follow up those matters?

A I imagine they do, occasionally.

Q Now, we have been talking generally about the Macon Branch, as an example only. Is there any substantial difference between the way those matters are handled there, as compared with, say the Tampa Branch?

A No. A clearly defined policy. All Branches are operated under that policy.

Q And those various details you have testified to, would apply equally at the Tampa Branch?

A Yes, sir.

Q Would they also apply, and would that also be true of the Miami Branch?

A I just said all branches.

Q All Branches?

A All of them.

Q Then, to clear this matter up, this point: Does that also apply to the Branches, on which you now, in the record, concede coverage?

A It applies to all of them.

THE COURT: He testified it applied to all of them.

MR. DOWNING: Will you explain, Mr. McGehee, just how the business of your branches, on which coverage is admitted, then, is different from the business done in the other branches?

A Well, which specific branch, for instance? Which

one do you have reference to? What about the Miami Branch?

A The Miami Branch does a business within the State of Florida. I believe they have a little foreign business in Nassau. They haven't any interstate business.

Q That little amount you speak of its the twelve thousand dollars worth in 1939?

A I think about one per cent of their volume, something like that.

Q And thirteen thousand dollars worth in 1940?

A I didn't figure it in figures.

MR. KURZ: There is nothing that has been made to appear as to any amounts, and the question assumes something that has not been established.

THE COURT: Yes.

MR. DOWNING: I think he can testify.

THE COURT: You can ask him if he knows. You are assuming something, I do not remember anything in the record about it.

MR. DOWNING: To clear up the testimony Mr. McGehee has just given, I ask—I move to strike that portion of the answer of the witness that states that the Miami Branch does no interstate business. That is a conclusion of the witness and is a matter for the Court to determine.

THE COURT: Well, the Court will determine it from the evidence that is in.

A Well, the Miami Branch does no interstate business under the long-standing procedure and authority of the

Supreme Court of the United States. I don't know what they do today.

MR. DOWNING: Your Honor, we ask that the witness's answer be stricken as not responsive.

THE COURT: Well, we haven't got a jury. Go ahead. That is a question bothering a lot of people right now. What is interstate commerce.

MR. DOWNING: What are the types of duties performed by the various employees in your Macon Branch, for example, Mr. McGehee?

A Well, name the employee.

Q Well, do you have a type of employee called a shipping clerk?

A Yes.

Q How many shipping clerks do you have?

A In Macon?

Q Yes.

A One.

Q Does he act for both the Coarse Paper Division and the Fine Paper Division?

A Yes, sir.

Q What is his name?

A I don't recall.

Q Is it Harry J. Matthews?

A No. Matthews is a boy in the Fine Paper Depart-

ment on the second floor that assembles orders up there.

Q Matthews is not the Shipping Clerk?

A No, sir.

Q What is his title?

A I just told you he is a boy in the printing paper department in Macon that assembles orders and sends them down stairs, and the shipping clerk ships them. I don't recall the shipping clerk's name.

Q How many truck drivers do you have in Macon?

A In Macon? There are to many branches, Mr. Downing, I can't recall.

Q You are not familiar with them?

A I know we have truck drivers at Macon, but I don't know how many.

Q Are you familiar with the clerical force?

A In Macon?

Q Yes.

A To what extent?

Q Well, do you know how many stenographers and bookkeepers you have?

A I know we have a bookkeeper, I don't know how many stenographers.

Q Are you familiar with their duties?

A No, sir. They just do what people in that position ordinarily do, I suppose.

Q Are there any other type of employees there that I have not mentioned?

A In Macon?

Q Yes.

A Oh, yes, they have some truck drivers and warehousemen that assemble orders and push trucks around the warehouse, and office employees and salesmen and manager.

Q Generally, are all those employees necessary to the operation of the business there?

A Oh, yes, they wouldn't be on the payroll if they weren't necessary.

Q Is that also true of the other branches, Mr. McGehee?

A Oh, yes. I don't think anybody would keep an employee just as a decoration.

Q Are you familiar with the details, locally as to the usual schedule of office hours?

A Here in Jacksonville?

Q Yes.

A Well, I am in the sales, department. You see, my office is primarily concerned with the sales. The accounting department is up stairs.

Q Is the usual time for going to work, eight o'clock, by the men?

A I think that is correct.

Q And the usual time for quitting six for the men?

A Yes, I believe that is correct.

Q The usual time for the ladies is eight twenty?

A It seems to me it is eight fifteen or eight twenty or eight thirty. I don't know which. Right around that time.

Q Is the usual time for quitting, on the part of the ladies, six o'clock?

A I believe that is right. I am not positive. Mr. Reinohl, or Mr. M. R. McGehee can tell you about that.

Q Is one o'clock the usual quitting time for both types of employees on Saturday?

A I think that is correct.

Q Has that been the usual and normal schedule since October 24, 1938?

A Yes. Longer than that, I think.

Q Now, as to the branches which are in dispute at the present time, on coverage. Will you state which have a coarse paper department only?

A Well, I—you mean the branches that we maintain are intra-state?

Q The ones on which you did not admit coverage under the act?

A Well, that's intrastate branches. Are those the branches you mean?

MR. DOWNING: Will you read the question, Mr. Reporter?

... The question was read.

A Well, you will have to identify them, Hr. Downing, and state them by name.

Q Let us take them by name, Mr. McGehee. Does the Tampa Branch have both a coarse and fine paper department?

A Yes, sir.

Q What about St. Petersburg?

A Only coarse paper.

Q What about Lakeland?

A Coarse paper.

Q What about Orlando?

A Coarse and fine.

Q What about Miami?

A Coarse and fine.

Q And, West Palm Beach?

A Coarse paper only.

Q At Macon, Georgia?

A Coarse and fine.

Q Does the Macon Branch, distribute in its territory, fine paper orders for the Tampa Branch?

A Does the Macon Branch—?

Q Pardon me, the Lakeland Branch?

A The Macon Branch—

Q Does the Lakeland Branch, distribute, in its territory, fine paper orders received by the Tampa Branch?

A No, I don't think so. I am almost positive they don't. They don't have any printing paper accounts.

Q As I understand your testimony a few minutes ago, Lakeland operates as an integral part of the Tampa Branch?

A Yes.

Q Do you know of your own knowledge, whether the Lakeland truck comes to Tampa regularly and picks up and distributes fine paper orders for the Tampa Branch?

A I think the Lakeland truck goes to Tampa regularly. It did for awhile, but Tampa has a truck in use for country delivery, and when it isn't busy, it haul Lakeland merchandise to Lakeland.

Q Did the Lakeland Branch, until recently, say until the middle of January, 1941, send its trucks regularly to Tampa?

A I think it did, yes, sir.

Q Up until that time, did the truck of the Lakeland Branch distribute fine paper orders of the Tampa Branch?

A I don't think so, Mr. Downing, but I am not positive about that. I can't state. My impression is they did not.

Q You were present in Tampa, Mr. McGehee, I believe, when depositions were taken there? Do you recall the testimony of Mr. J. B. Brown on that point?

A No, I don't remember anything concerning it.

MR. KURZ: We object to that. We think the witness

should answer questions according to his own knowledge and not what some other witness may have testified.

MR. DOWNING: I am asking if he recalls the testimony.

THE COURT: I sustain the objection. Unless somebody else testified differently, he would not necessarily agree.

MR. DOWNING: I understand that. This being an adverse party, we are at liberty to cross examine him and impeach him, if necessary.

THE COURT: Not about immaterial matters.

MR. DOWNING: Generally, is there any overlapping of territory among your branches?

A Florida Paper Company and Jacksonville Paper Company.

Q And they are branches on which you now admit coverage under the Act?

A They are branches doing interstate business.

Q Now, as to the branches which are in dispute, there is no overlapping of territory?

A Well, I don't know what you call "in dispute." You ask me about a branch and I will tell you if there is any overlapping.

Q Other than the branches at Jacksonville?

THE COURT: What difference does that make Mr. Downing?

MR. DOWNING: To show the sphere of business. They

are not in competition with each other. They are simply links in the chain.

MR. DOWNING:

Q I think I have has answer, though. He said the only overlapping was here at Jacksonville and I will let it go at that.

THE COURT: I think that answers it.

MR. DOWNING:

Q Does your warehouse in Jacksonville handle both fine and coarse paper?

A Yes, sir.

Q Do the branches generally handle the same line as the Jacksonville warehouse?

A In what department do you mean?

Q The coarse paper department, for example?

A Well, principally a few of them, they have one or two items that they have a particular demand for in their trading territory, that there might not be a demand for in the other territories. But, it is negligible.

Q Do the branches in general handle as many as ninety-five per cent of the same items of Jacksonville Paper Company, as Jacksonville?

A Well, I would say approximately that, I don't know whether it would be ninety-five or ninety or ninety-seven.

Q Is any processing of goods done by the Jacksonville Paper Company, Mr. McGehee?

A No, sir.

Q Any manufacturing done?

A I had better amplify that a little bit. Jacksonville Paper Company have what is generally known in the industry as cutting knives. That is, cutting machines that we cut paper from one size to another as occasion demands.

Q Is that used in the coarse paper department or fine paper department?

A Fine paper department papers.

Q Is that the only type of processing done in the business?

A In the distributing business of Jacksonville Paper Company, yes, sir.

Q That is the only type of processing that is done in any of the branches?

A Yes.

Q Are you familiar in a general way with the price books of both departments?

A Yes, sir.

Q Are most of the items listed in those price books carried in stock?

A Yes, most of them.

Q Is that true of the branches, also?

A Yes, sir.

Q The fine paper price book, which has been identified by Mr. Reinohl, indicates that a number of the items listed

are carried in stock and that other items are carried by the manufacturer?

A Well, I said most of them was carried in stock. I didn't say all of them were.

Q As to the items listed here as being stocked at mill, will you state what is meant by that, if you know?

A That is, items that the mills stock regularly, but we haven't a sufficient demand for it in our trading territory to justify stocking it in our warehouse.

Q Let us assume an order was received from the Macon Branch for one of those items listed here as "stocked at the mill?" Would it be necessary for Mr. Rose to place an order with the manufacturer to fill the branch's order?

A Yes, sir.

Q Is that true of the other items listed in here as "items stocked at the mills?"

A Yes. But very little of that is sold.

THE COURT: What was the answer?

... The answer was read.

THE WITNESS: Those are items, Mr. Downing; that the mills stock, as I said, and we might encounter one order a year of those things. A fellow might want one in his territory, and if he does want it, we will know what to do with it.

Q Would Mr. Ross be familiar with the method in which orders are received for those items?

A I suppose as familiar as anyone in the organization.

Q He is the employee who is entrusted with the duty of ordering these items, is he not?

A Yes, sir.

Q Generally, do the branches solicit their own trade territory?

A Oh, yes, that is the only justification for the branch.

Q They have their own sales force?

A Yes, sir.

Q Has it ever happened that orders received by certain branches may be grouped in placing an order with the manufacturer?

A Well, we have some cars. We split cars between branches, occasionally, from the factory. Stop at one branch for partial unloading and terminate at another.

Q Has that ever occurred at the Macon Branch, for example?

A Oh, yes.

Q To what branches then, would the car proceed after being partly unloaded in Macon?

A As a rule, Macon and Savannah split cars.

Q Has that also happened in the case of the branch at Tampa?

A Macon and Tampa?

Q Or Tampa and other branches?

A Oh, yes.

Q With what branches has the Tampa Branch split a car?

A Well, they split frequently with St. Petersburg, and Lakeland, and sometimes with Jacksonville.

Q Does Orlando ever split with those branches?

A Orlando splits with Jacksonville quite often, and Tampa. Sometimes Miami.

Q Would the West Palm Beach and Miami branches ever split a car of merchandise?

A Yes, sir.

Q How frequently?

A I don't recall that, Mr. Downing, but I am positive it is done occasionally.

Q I believe you indicated, Mr. McGehee, that the Miami Branch has stopped making sales to Nassau?

A Yes, sir.

Q When was that done?

A We did that about sometime in January or February.

Q Was it done after the beginning of the talking of the depositions?

A About that time, yes, sir. We read the Wage and Hour Law and one section said that we must regulate interstate commerce between the states of the United States and Mr. Kurz found another paragraph about foreign commerce, and he told us we had better discontinue that and take it to Jacksonville.

MR. DOWNING: Again we move to strike the latter portion of the witness's answer as not responsive and unwarranted.

THE COURT: Overruled.

MR. DOWNING: But it was after the beginning of the depositions that you issued those instructions?

A Yes, sir.

Q Was it after the attorney for the Wage and Hour Division was able to develop the extent of the business then at Miami?

A We knew that the business was there all the time, but we never considered it as having any bearing on interstate commerce.

Q Did you think the Division would not be able to develop that business?

A Do which?

Q Did you think we would not be able to discover it?

A We helped you discover it. We did not try to hide it.

MR. KURZ: I think that is unfair, Your Honor.

THE COURT: I think it has been fully covered. Pass on.

MR. DOWNING: Since that time do I understand that business has been taken care of from Jacksonville?

A Yes, sir.

Q You still have the same customers there that you had before?

A Well, I can't answer that. I don't know. I hope we have.

Q You have not voluntarily relinquished any of the business?

A No, sir.

Q Mr. McGehee, do you do the purchasing of raw materials for the Southern Industries?

A Yes, sir.

Q Will you state generally the nature and the types of raw materials used by that concern in the manufacture of its products?

A Well, in what department?

Q Well, let us take the bag department?

A The bag department uses paper from which bags are made, and we buy dextrine corn starch from the starch manufacturers, and convert that into gum. Of course, we use some water and steam in connection with the manufacture. Also, a paper is bought as that is necessary in the manufacture of a bag.

Q What do you use in manufacturing envelopes?

A Well, the same thing, only we use a little better grade of gum.

Q Do you use paper?

A Oh, yes, the same way we buy the envelope stock.

Q Which is the raw paper stock?

A Yes, sir.

Q What do you use in the manufacture of brooms?

A Buy broom corn, broom handles. Wire that is used to bind the broom corn on the end of the handle. We use some paint in painting the handles.

Q What do you use in the manufacture of coat hangers?

A Wire.

Q Anything else?

A That is all. Well, we paint some of them.

Q What kind of boxes do you make at Southern Industries?

A Well, we make what is known in the industry as knocked down boxes, such as boxes used in department stores and clothing stores and pasteboard boxes used by bakeries.

Q What raw materials are used in the manufacture of those?

A Just boards. Box boards.

Q Do you manufacture adding machine paper and soda straws?

A Yes, sir.

Q What is used in those?

A Well, adding machine paper, you just buy the large rolls and cut it into small ones. Rewind it on a machine to small rolls.

Q What is used in the manufacture of soda straws?

A You buy papers from which the straws are made and buy ingredients from which glue or gum is made. Runt it through the machine, twist it and gum it together.

Q Do you make paper bags called glazing bags?

A Yes, sir.

Q Is there a special type of paper required for that?

A Yes.

Q What is that?

A Glazing paper.

Q Yes.

A It is highly refined sheet. It is made from the same raw material the ordinary paper is made from. It is highly refined. In the industry, they run it through what they call beaters, beat the fibre up fine and it gives it a transparent effect. Then run it over a collender machine to give it a sizing on each side.

Q Will you give us the names of manufacturers from whom you buy those materials, raw materials, that you named in the last few names? Where do you get Kraft paper from?

A For bag purposes, you mean?

Q Yes.

A We buy bag Kraft from Crossett Paper Mills and Hollingsworth and Whitney.

Q Where are they located?

A Crossett, Arkansas; Mobile, Alabama, Elizabeth Louisiana, Cal Casieu Paper Company.

Q Do you get anything from Nacoosa-Edwards Paper Company?

A Yes.

Y Are they at Necoosa, Wisconsin?

A Yes.

Q Are there any others?

A I don't recall any more right now, Mr. Downing.

Q What about your envelope paper. Where does that come from?

A We buy that from Parker-Young Company, I believe, at Lincoln, Maine, and from Champion Paper & Fibre Company, Hamilton, Ohio.

Q Do you get anything from Eastern Manufacturing Company, Bangor, Maine?

A Yes, buy a lot of sulphite bond from them.

Q Is that used in manufacturing products of Southern Industries Company?

A It is used, bond paper, in a limited way; when we use bond paper to make stationery.

Q Do you make any tablets or school supplies at Southern Industries?

A Yes.

Q What raw materials do you use?

A Just use paper. Run it through a machine and set it up into proper sizes and put it in a drill and put holes in it.

Q And do you have anything with a spiral effect?

A Yes, sir.

Q Do you use a wire in that connection?

A Yes, sir.

Q Where is all your paper obtained from that is used to manufacture those items?

A We buy most of that paper, itself, from Parker-Young. The other papers are bought from various sources. Champion Paper and Fibre Company.

Q Where is the Chaimpion and Fibre Company located?

A The general office is at Hamilton, Ohio. They have three or four mills around the country. One at Houston and one at Canton, North Carolina.

Q Do you get antything from all of them?

A I don't think we get anything from Houston. We get from Hamilton, and Canton.

Q Where do you get broom corn from?

A Buy it through brokers through the middle west, out in Kansas, Oklahoma, Southern Illinois and Texas. It is all grown out in that area.

Q How many brokers furnish you with broom corn?

A Six or eight.

Q Would there be as many as a hundred of them?

A Oh, yes, probably more than that, but we don't buy

from all of them. You mean forty or a hundred we buy from?

Q Yes.

A No.

Q He said two or three.

MR. DOWNING: I will ask you to refresh your memory, going back to the depositions taken in Jacksonville on Wednesday, March 5th, and I will ask you if you recall this question put to you by me, and if you answered as follows:

"Q From what source do you get the raw materials for the manufacture of brooms and mops?"

"A We buy broom corn from the middle west. Corn brokers. Possibly fifty or one hundred of them. I don't recall their names."

A I did not say fifty or one hundred. We buy from possibly four or five or six, maybe. I meant there were fifty or one hundred of them out there in business. Maybe someone misunderstood the answer.

Q You reframe your answer then to state you actually buy from four or five of them?

A I do not admit I answered that. I never bought from that many. There wouldn't be any justification for my having answered that.

Q Where do you get the raw materials for your coat hangers?

A Continental Steel Company and Atlantic Steel Company, United States Steel Corporation.

Q What about the Tennessee Coal, Iron, and Railroad Company?

A That is a division of the United States Steel.

Q Where are those mills located?

THE COURT: How much longer will you be Mr. Downing?

MR. DOWNING: I think I can be through in fifteen minutes.

THE COURT: Well, we will take a recess until nine thirty tomorrow morning.

(Witness temporarily excused)

And thereupon Court adjourned to be reconvened at nine thirty o'clock, in the forenoon, Thursday, April 24, 1941.

.... And thereupon at 9:30 o'clock a. m., Thursday, April 24, 1941, Court reconvened pursuant to adjournment and the following further proceedings were had:

MR. DOWNING: Your Honor, before putting Mr. McGehee back on the stand to finish his examination, I would like to ask leave to make an amendment to our complaint to conform to certain evidence to be submitted. I find that the complaint alleges only the engaging in interstate commerce. I would like permission, at the end of paragraph 4, the last two lines, to insert after "interstate", the words "and foreign commerce." Just insert the words "and foreign"; in order that the pleadings may be conformed to the evidence. Page 4 of the complaint, the fourth and fifth lines.

THE COURT: Page 4?

MR. DOWNING: Yes, sir, on the fourth page; the fourth and fifth lines on the fourth page; the words "and

foreign" to be inserted between "interstate" and "commerce" in both lines.

THE COURT: Is there any objection, Mr. Kurz?

MR. KURZ: That introduces another element into the case, your Honor, and perhaps it is not in accordance with the statement of the purpose of the Act, and therefore may not be the proper amendment at all, because in the preamble—

THE COURT: I think that is a matter to be disposed of on final argument, is it not? A matter of pleadings does not amount to much any more.

MR. KURZ: It is not what it used to be.

THE COURT: No.

MR. KURZ: The proof on that will not take long?

MR. DOWNING: No.

THE COURT: Let it be inserted in the original. Do you want it inserted in the original?

MR. DOWNING: If the record will show it is amended, that will be sufficient, your Honor.

THE COURT: I think we better write it in here. Mr. Downing, just insert that right here, or Mr. Clerk, just insert it right here, if you will.

Now, proceed.

MR. DOWNING: I believe as we adjourned yesterday, Mr. C. G. McGehee was on the stand. I have a few more questions to ask him.

THE COURT: All right.

MR. C. G. McGEHEE,

having been previously duly sworn as a witness on behalf of the plaintiff, was recalled to the witness stand and further testified as follows:

DIRECT EXAMINATION (continued)

BY MR. DOWNING:

Q Will you read the last question or two, Mr. Reporter?

The desired portion of the record was read, being as follows:

"Q Where do you get the raw material for your coat hangers?

"A Continental Steel Company, Atlantic Steel Company, United States Steel Corporation.

"Q What about the Tennessee Coal, Iron & Railroad Company?

"A That is a division of the United States Steel.

"Q Where are those various mills located?"

THE WITNESS: Continental, Kokomo, Indiana; Atlantic Steel Company, Atlanta, Georgia; United States Steel Division that we purchase this wire from is at Birmingham, Alabama.

Q Do you also get wire from the American Steel & Wire Company?

A That is a division of United States Steel.

Q They are located at what point?

A Birmingham.

Q Where do you get broom handles, Mr. McGehee?

A Buy some of them next door to the plant out there from a man who makes them, and buy some from Mobile, Alabama.

THE COURT: Broom handles. I did not understand what you were inquiring about.

Q Mr. McGehee, you buy your broom handles principally from Meyer Handle Company, in Mobile?

A I suppose about half of them. I suppose this fellow out here possibly furnishes half of them.

Q What material is used in making knocked down boxes?

A Box board.

Q Do you buy that from Manchester Paper Company in Richmond?

A Manchester-Borden Paper Company.

Q In Richmond?

A Yes, sir.

Q And Mobile Paper Mills, in Mobile?

A Yes, sir.

Q And Tennessee Paper Mills, in Chattanooga?

A Yes.

Q Do you get your materials for glassine paper and glass envelopes from Wilson Paper Company, of West Conshohocken, Pennsylvania?

A From whom?

Q Wilson Paper Company?

Q From-whom do you get it?

A No.

A Glassing Paper Company.

Q Where do you get it?

A West Conshohocken, I believe it is.

Q Pennsylvania?

A Yes, sir.

Q Do you get some from the Manchester Board & Paper Company?

A Glassine?

Q Yes.

A No, they don't make it.

Q What do you buy from Manchester Board & Paper Company?

A I just told you a moment ago; board.

Q That is located in Richmond?

A Yes, sir.

Q Where is the Nekoosa-Edwards plant located?

A Port Edwards, Wisconsin.

Q They supply some of your raw material for Southern Industries?

A Some for the bag plant, yes.

Q I believe it is alleged in your answer that all of the products of Southern Industries are sold to Jacksonville Paper Company at Jacksonville. Will you tell us, Mr. McGehee, who fixes the price for those sales of those products?

A Who fixes the price?

Q At which they are sold to Jacksonville Paper Company.

A It is controlled by the market on a given commodity.

Q Who in the organization decides what the market is for the price of the products to be sold to Jacksonville Paper Company?

A Well, we have a price list issued by various manufacturers throughout the United States on those commodities.

Q Who matches up the prices against those price lists?

A I think Mr. Graham does, unless there is some drastic change and he then probably consults me about it.

Q Mr. McGehee, I am not inquiring about the sales price of products of Jacksonville Paper Company to its customers, but the sales price from Southern Industries Company to Jacksonville Paper Company.

A Sale price. Do you mean what that price is?

Q Yes, and who fixes it.

A I just told you Mr. Graham uses the price list on commodities of competitive manufacturers throughout the country.

Q The sales price is based on similar items which you purchase from other manufacturers?

A Less a figure deducted for freight, and less a figure deducted that Jacksonville Paper Company charges for services rendered in selling the product.

Q And Mr. Graham is the representative of the companies who determines what that resulting figure is?

A No, he isn't representing those companies.

Q Well, is Mr. Graham the man who determines the price at which the goods are to be billed to the Jacksonville Paper Company?

A Yes, he determines it from these price lists I was telling you about.

Q Less these deductions for freight and less the service charge?

A The charge the Jacksonville Paper Company assesses against Southern Industries for its services for selling the product.

Q Is that the five per cent charge that has been referred to?

A Yes, sir.

Q In the depositions?

A Yes, sir.

Q With what does the Jacksonville Paper Company charge the Southern Industries Company on its books, other than the cost price of the raw materials and the charges you have just mentioned?

A What does the Jacksonville Paper Company charge the Southern Industries Company for raw materials—?

Q Other than raw materials and the other charges you have just mentioned.

A I don't recall anything. We sell the Southern Industries all the raw materials they buy. I don't know of anything else we charge to them.

Q That sale is represented, is it not, by an entry on an account which is kept at the Jacksonville Paper Company office?

A I think it is billed. Mr. Reinohl can tell you more about that, but I think it is an invoice that is made.

Q Mr. Reinohl is familiar with those details?

A Yes.

Q I believe you said that Mr. Graham is employed by the Jacksonville Paper Company?

A That is correct, yes, sir.


Q He is not an employee of Southern Industries?

A No, sir.

Q And he is the man who fixes the price at which the Southern Industries Company—?

A No, I didn't say he fixed it. I said he took the market price on a given commodity as published by competitive concerns and deducts therefrom the charge we make. He doesn't fix any price at all.

Q That determines the actual billing price, does it not?



A This market price, published by competitive manufacturers, determines the billing price.

Q Does anything else enter into the billing price than the factors you have mentioned?

A Anything else enter into it? What do you mean?

Q Other than Mr. Graham's act in taking the competitive price obtained from price lists of other manufacturers and making these deductions you mentioned?

A That is all.

Q The result is the price at which Southern Industries bills the goods to Jacksonville Paper Company, is that correct?

A That is correct, yes, sir.

Q Now, you mentioned a five per cent service charge which Jacksonville Paper Company makes for selling—

A For selling and other services.

Q For selling and other services?

A Yes, sir. All services Jacksonville Paper Company renders.

Q Then do I understand from that that the Jacksonville Paper Company is the sales agent of Southern Industries?

A We buy it outright from them at a certain discount agreed upon and then sell it.

Q And you make a charge of five per cent, which covers all bookkeeping and accounting services, plus the selling services?

A Yes, sir.

Q Does Southern Industries have any salesmen of its own?

A No, sir.

Q In the event it appears that there are different prices listed in a competitive price list, who determines which one to use in billing the charge to Jacksonville Paper Company?

A Well, I can't recall having seen any difference for any period of time; more than two or three days. We get a big price list from one manufacturer. Within a week we get it from all of them. They all have about the same price, as a matter of fact.

Q If there is any difference in price at any given time, who determines which charge shall be used for the basis of sales to Jacksonville Paper Company?

A I imagine if such happens, Mr. Graham would consult me.

Q And you would make the final decision?

A Yes, sir.

Q I believe you stated on yesterday, Mr. McGehee, that your branches handle generally the same line of merchandise?

A I said with some exceptions on some items; for certain markets.

Q With that qualification, generally, I believe you also stated that orders are solicited in the same manner by your various branches?

A Orders of what?

Q Are solicited in the same manner.

A They are solicited in the same manner to the degree that they all have salesmen. They call on the trade.

Q They generally follow the same selling methods, do they not?

A I don't think I have ever seen two men pursue the same selling methods.

Q Well, they are assigned to allotted territories, are they not?

A That is correct, yes.

Q They travel that at regular, periodic intervals?

A Yes, sir.

Q Calling on the trade?

A Yes.

Q And taking orders?

A Yes, sir.

Q Is there any other difference that you can point out in the way it is handled—?

A You mean as to policy?

Q No, in the methods of selling only.

A I don't go along with these men. I can't tell you about that.

Q Do you know of any difference in the general methods of selling followed by the various branches?

A No. There is no difference in the policy.

Q Are the goods generally handled and moved through the warehouse in the same manner in all the branches?

A They are handled and moved through the warehouses like all goods are handled and moved through the warehouse. They are unloaded from freight cars into the warehouse and orders assembled and loaded on to trucks or other means of transportation that are selected, and they are delivered.

Q Now, generally, are the deliveries to your customers made in the same manner at all of your branches? That is, namely, by company trucks?

A Yes, they all have trucks.

Q And are there some which are made by common carriers, trucks?

A Yes, sir.

Q Are there some that are made by Railway Express?

A Well, some of the branches, yes, express; Railway Express. I don't know that they all do.

Q Occasionally do some of them make deliveries by parcel post?

A I imagine they do. I don't know, Mr. Downing. I did not check all that.

Q Can you specify any essential difference in the handling of goods—the manner in which goods are handled in the various branches?

A I do not think there is any essential difference in the manner in which the goods are handled in our various branches or any essential difference in the manner

in which goods are handled in any other wholesale house.

Q Do the functions of the employees vary essentially in the various branches?

A Not that I know of.

Q Do you, in any of your warehouses, store goods for hire?

A No, sir.

Q Mr. McGehee, does the Jacksonville Paper Company have a policy with respect to allowing its employees vacations with pay?

A Yes. We have always allowed them a vacation. I do not know since—you mean—since we went under the Wage and Hour schedule on certain branches, I do not know how they handled that. Mr. Reinohl. They have a vacation and they are paid, but it may be added to accumulated hours. I do not know. We have an accumulated hour plan, but he can explain that to you. I am not familiar with it.

Q I will ask you, Mr. McGehee, to refresh your recollection and state whether, in the depositions taken on March 5th, this question was asked you and if you replied as follows:

"Q Since the rehiring of employees on or about April 29, 1940, Mr. McGehee, what has been the custom of the company with reference to vacations with pay?"

"A There hasn't been any change in the policy of the company in any particular as regards its relations with its employees."

A Well, there hasn't. They still get their vacations and they still get their pay, but I say, I do not know

whether they add that period to the accumulated hours or not.

Q So other than the possibility of the hours being added to the accumulated hours, there has been no change?

A No, sir.

MR. KURZ: It seems to me, your Honor, the witness is fairly answering the question. He said he did not know.

THE COURT: Yes, that is true.

Q What has been the policy of the company, Mr. McGehee, with reference to making deductions from the weekly salaries for time lost on account of illness?

A Of employees?

Q Yes.

A Well, I recall we have paid several of them. I remember one man, we paid his salary for six months while he was sick; and another one, we paid his salary for four or five months, at varying times. Those happened to be outstanding because of the considerable period of time.

Q If an employee loses a day or two in a given week on account of illness, is any deduction made from the weekly salary?

A Not unless he is paid by the hour and works by the day. If he is working on a weekly job, there is no deduction made that I know of. Mr. Reinohl and Mr. M. R. McGehee are handling those details. I am not altogether familiar with it.

Q I will ask you if in the deposition I have been reading from, this question was asked you and you made this answer:

"Q You still pay a full week's salary when time is lost from illness?"

"A Yes."

A They may quit with accumulated hours. I don't know.

Q Other than that, has there been any change in the policy of the company?

A Not with the employees of the Jacksonville Paper Company, no.

Q Then, as I understand your over-all testimony, there has been no change in the company's policy with respect to its salaried employees other than in the respects in which I have questioned you, other than in the adding of the hours to the accumulation of hours?

MR. KURZ: The witness has already stated that he was not certain and he did not keep the records and was not familiar with the details.

THE COURT: I think he has answered the best he could, already.

MR. DOWNING: All right. .

Q As I recall your testimony on yesterday, Mr. McGehee, the schedule of daily office hours has generally remained the same in main office here?

A Remained the same? What do you mean, remained the same?

Q The men worked from eight to six and the ladies from eight twenty to six.

A I think that is about right. Mr. Reinohl has that

schedule. He can give it to you. That is approximately correct.

Q And the usual quitting time on Saturday was one o'clock?

A Well, I think that is correct, too, but he can verify that. I do not keep those details.

Q Mr. McGehee, has your business generally expanded or contracted in the last two years?

A Our business has expanded since the day it was opened.

Q Has the number of your employees increased in the last two years?

A Yes.

Q Have they increased since the filing of the complaint?

A I imagine so. I haven't kept any record of it, but it most likely has.

Q Is your business seasonal or otherwise?

A Some territories are seasonal, some are not; not any more than a normal fluctuation. I do not think there is a territory in the world that does not do that except for seasonality.

Q Generally is seasonality more pronounced in some branches than in others?

A Yes, sir.

Q Is that true—Is Miami a branch in which seasonality plays a greater part?

A Yes; Miami, Palm Beach, St. Petersburg.

Q I believe you stated yesterday that you have entrusted or delegated to your local managers the duty of employing—interviewing and employing new personnel. Who does that in the main office and warehouse?

A Depends on what department it is in.

Q Who employs the office employees?

A That depends on which department it is in.

Q What about those under your supervision?

A I cannot recall if I employed anyone in the last six or eight or ten years, personally, Mr. Downing.

Q Who does the employing of the employees in your department?

A Well, in the coarse paper division, Mr. Graham; in the printing paper division, Mr. Adkins, if it is in the sales department. If it happens to be some stenographer or something, Mr. Ross, I guess, would employ her.

Q Does Mr. M. R. McGehee do any employing?

A I don't know whether he or Mr. Reinohl does.

THE COURT: What difference does it make. It looks like we are wasting a lot of time going through all this.

MR. DOWNING: I am leading up to a basis of later questioning with reference to the employees' re-employment contract.

THE WITNESS: If you want to know about that, I can tell you about that.

MR. DOWNING: I am going to get to that in just a

minute, Your Honor. I am going to find out how it was handled in the past, and the difference—.

THE COURT: Let us get down to the re-employment matter.

Q I would like to ask one more question: Does Mr. C. G. McGehee hire any persons for the warehouse department?

A He hires them all for the warehouse department.

Q How do you get your new employees, generally, when you need them?

A You have to ask the fellows who do the employing. I do not know.

Q In the spring of 1940, were you considering liquidating your business?

A No, sir.

Q And you had the usual amount of stock in your warehouse?

A Yes, sir.

MR. KURZ: Your Honor, I cannot see what the relevancy of all this is.

THE COURT: I don't either.

MR. DOWNING: Your Honor, I am leading up to the re-employment contract—.

THE COURT: Get on to the re-employment contract.

MR. DOWNING: I will.

Q After deciding to discharge all of your employees, what attempt did you make to employ others?

A After deciding to do what?

Q To discharge your employees, what attempts did you make to hire others to fill their positions?

A We did not discharge them all.

Q On those that you did discharge, what attempt did you make to replace them?

A We discharged the employees in the warehouses doing an interstate business; sometime in April, 1940.

Q Did you make any attempt to replace them?

A They were told when they were discharged that there would be a vacancy on the following Monday morning. This discharge took place on Saturday, and, if they cared to apply for the position at the conditions under which they would be re-employed, and they were acceptable or satisfactory to them, that they might have the job back.

Q Did you run an ad in any newspaper for new employees to take their places?

A I don't think we did.

Q Did you get in touch with any employment agency?

A Not that I know of.

Q Other than simply advising them that the job might be open Monday, there was no attempt made to employ new employees?

A Not that I know of.

Q Were you considering liquidating your interstate business, Mr. McGehee?

A I just told you I was not.

MR. KURZ: The Court just ruled on that.

THE COURT: He has already answered it anyway.

Q Did you discharge any employees at that time in these branches; Miami, Lakeland, Tampa, St. Petersburg, Orlando, Macon, and West Palm Beach?

A We did not discharge any employees that were in the warehouses doing an intrastate business.

MR. DOWNING: Your Honor, I would like to move—.

THE COURT: We haven't got a jury, Mr. Downing. I do not think what his conception of interstate commerce is will affect the Court any more than yours.

MR. DOWNING: I asked specifically if any employees had been discharged in certain branches. May I ask the reporter to read it?

THE COURT: He said the ones in intrastate, according to his conception.

MR. DOWNING: Yes. Of course, this is all going into the record, and we want the record to show the responsive answers.

THE COURT: I have ruled on it, Mr. Downing.

Q As I understand it, Mr. McGehee, the salary of no employee who was purportedly discharged was lowered after the alleged re-employment?

MR. KURZ: I object to the form of the question, your Honor. He said "purportedly discharged". It assumes something that has not been shown.

MR. DOWNING: Now, your Honor, I am basing

my own conclusions on what took place. Mr. McGehee has just been placing his conclusion—.

THE COURT: Let him answer.

A There weren't any employees purportedly fired or discharged. Several of the girls went back in the washroom and crief half an hour after they got that letter discharging them. So I was told the next week.

Q I don't believe that answer answers the question.

MR. DOWNING: Mr. Reporter, will you read it, please, sir?

THE COURT: I think the question was, were any of the salaries of the employees who were discharged, reduced; isn't that it?

MR. DOWNING: Yes.

A I don't know whether they were or not. I did not work out those details.

Q Do you recall testifying to this in the deposition?

A My impression is they were not. I am not positive. I didn't check it off.

Q In fact, do you remember testifying that in a few cases they got raises of a few cents?

A When they came back Monday morning and applied for their positions, they were told they would be paid so much per hour and time and a half above the regular schedule, and told what the hours, or the hourly rate would be, and if that was acceptable to them, they could have their job, and if they didn't want it on that basis, it would be filled otherwise.

Q In a few cases did that result in raises of a few cents?

A It may have.

Q In the weekly salary?

A It possibly did. I think it did. I did not work out the details.

Q But there was no substantial raise in the weekly rate of pay?

A I don't think so.

MR. DOWNING: Your witness.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. McGehee, you were asked on yesterday whether the Lakeland branch is an integral part of the Tampa branch. Does the Lakeland branch have a separate warehouse?

A Yes, sir.

Q Does it maintain a stock of goods?

A Yes, sir.

Q Does it have salesmen?

A Yes, sir.

Q All separate and apart from Tampa?

A Well, the accounting, Mr. Kurz, is done in Tampa. It does not maintain an accounting department, nor does it have a credit department.

Q It has a separate man in charge of it?

A Oh, yes; yes, sir.

Q Are the territories of the branches defined in which they may do business?

A Yes; with the exception of the Florida Paper Company.

Q In the Lakeland, Miami, West Palm Beach, Tampa, Macon, Orlando branches, their lines are distinct as to each separate branch, are they not?

A. Very definitely, yes. Some of them overlap.

Q Are they permitted to sell in the territory of other branches?

A No, sir. If they get an order in the territory of the other branch, it goes to the other branch.

Q Does that same principle apply to the Macon branch?

A Yes, sir.

MR. KURZ: That is all.

THE COURT: Come down.

MR. DOWNING: May I ask one or two questions on redirect, your Honor?

REDIRECT EXAMINATION

BY MR. DOWNING:

Q In the case of the Lakeland branch, are the orders for stocks of goods submitted to the Tampa branch also?

A Are the orders for the Macon warehouse submitted through the Tampa branch?

Q The Lakeland branch.

A Lakeland. I don't believe so, Mr. Downing. My impression is that those orders come direct to Jacksonville, because I know a good bit of the merchandise goes direct to Lakeland.

Q Would Mr. Wilkiford and Mr. Graham and Mr. Ross know about that?

A Yes. I don't know about Ross, because Lakeland doesn't get anything in the printing department.

Q I understood you to say on cross examination when a branch gets an order from a customer in another territory, the order is forwarded to that other branch.

A I think it goes through the clearing office here in Jacksonville, if I remember correctly. It is forwarded to Jacksonville and it is sent to the territory whose branch it is.

Q Let us assume the Macon branch gets an order in the territory of the Pensacola branch, or the Tallahassee branch. How would that order be transmitted for filling?

A They would send it to the Jacksonville Paper Company and the Jacksonville Paper Company would send it to the proper branch.

Q And the proper branch, either Tallahassee or Pensacola, in the case cited, would fill the order?

A Yes, sir.

Q By direct shipment to the customer?

A Well, if it was a customer of theirs, they would ship it direct to him, yes.

Q Would the branch making the shipment do the billing?

A Oh, yes, the branch making the shipment would do the billing; the other branch wouldn't even have an account with the man, if he was not in that territory.

Q The connection would be only the obtaining and forwarding of the order?

A He wouldn't obtain the order. An order of that character would come through the mail. They would not solicit it. They do not go beyond the bound of their territory and solicit anything.

Q Mr. McGehee, on the morning of April 29th, when the employees were purportedly rehired, did you hire anyone?

A Me?

Q Yes.

A No.

Q Did you direct anyone to go to work?

A No.

Q What about your secretary?

A I don't think I even hired her. I think Mr. Graham or Mr. Reinohl talked to her and outlined the plan to me. In fact, I think Mr. Reinohl posted the schedule; posted it and put it on a billboard.

MR. DOWNING: That is all.

(Witness excused)

MR. A. S. REINÖHL,
having been previously produced and duly sworn as a witness on behalf of the plaintiff, was recalled to the witness stand and further testified as follows:

DIRECT EXAMINATION (cont.)

BY MR. DOWNING:

Q Please state your name.

A A. S. Reinohl.

Q Mr. Reinohl, what is your position with the Jacksonville Paper Company?

A Auditor.

Q How long have you been auditor?

A I have been with the Jacksonville Paper Company for the past ten years and approximately six or seven years of that time has been as auditor.

Q Under whose supervision do you work?

A Mr. M. R. McGehee.

Q What is his position with the company?

A Secretary and Treasurer.

Q Is he in charge of the accounting department?

A Yes, sir.

Q Are you in charge of any recognized section or division of the accounting department?

A Well, I have charge of the auditing and handling the personnel in the Jacksonville office.

Q By "handling the personnel", what do you mean?

A Well, I outline the work and employ additional help if we need them, and such other tasks as are necessary. In these matters, of course, they are discussed with Mr. M. R. McGehee if occasion arises, or it is necessary to do so.

Q Are you in charge of the records of the branches that are kept in the Jacksonville office?

A Yes, sir.

Q Will you state, Mr. Reinohl, what accounting controls are exercised by the main office over the branches?

A The general ledgers are all being carried in the main office. Each branch has its own accounts receivable ledger and carries the customers' accounts and collections; cash books. They make monthly reports as to sales and collections. They furnish us with copies of the cash book sheets.

Q You stated that the main office handles the general ledgers. Do you mean the accounts payable ledgers?

MR. KURZ: Your Honor, I realize, and it seems to me the details of the bookkeeping methods of the company are not relevant and I object to the question as immaterial and irrelevant.

MR. DOWNING: I think it is very relevant in showing the integrated nature of the business. The fact that it is a unit and the control exerted by the main office is very pertinent.

THE COURT: Has not that been pretty well established by this witness?

MR. DOWNING: This witness has only answered a few questions. There are some other details I wanted to establish by him. Mr. McGehee covered it generally, but statd Mr. Reinohl could state the details of the control.

THE COURT: Do we have to go into every detail? Read the question.

The question was read.

THE COURT: Go ahead and answer.

A The branch offices do not have an accounts payable ledger. The general ledgers are the controlling accounts from which the results are figured.

Q The accounts payable ledgers here contain records of all purchases made by the company for its branches?

A Yes, sir.

Q I believe you stated that the branches do not—that the main office does not keep accounts receivable for the branches?

A Not for the branches.

Q Does it get copies of sales invoices made up in the branches?

A Yes, sir.

Q Are those invoices posted to any record,—any control record in the main office?

A Only to the stock records.

Q The Cardex inventories?

A Yes.

Q Does the main office or the branches pay such items as rent, water, lights and so forth, for the branches?

A The branches pay their own light and water bills.

Q Out of petty cash?

A Out of their petty cash fund.

Q Who pays the rent?

A The main office makes the rent check, charging the branches with the same.

Q Who furnishes the funds with which to pay the employees of the branches?

A The check is mailed from Jacksonville. In the event the branch has a local bank account, we draw a check on that local bank in the name of that branch.

Q Do you exert any supervision, Mr. Reinohl, over the records in the branches? You, yourself.

A Yes, sir.

Q Will you tell the Court what that is, what that consists of?

MR. KURZ: Your Honor, I make the same objection. It has been established pretty well that the Jacksonville office does supervise the business of the branches and controls them in a general way.

MR. DOWNING: I think, your Honor, in showing the nature of this business, it is pertinent to show the nature of the control exerted and exercised.

THE COURT: It has been shown.

MR. DOWNING: I do not think this detail has been shown, your Honor.

THE COURT: Is it necessary to go into every detail? We will be here for the next month if we just go into every single phase and feature of it. Go ahead and answer this question, but let us try to have it generally rather than detailed.

MR. DOWNING: I am trying to cut it down as much as I can.

A. What was the question, please?

Q (Question read).

A The policy for handling the accounting department is outlined by the Jacksonville office, under my supervision. When I audit the branches, if the records are not taken care of in line with their instructions, such adjustments as necessary are being made.

Q Do you actually go into the branch offices?

A Yes, sir.

Q Periodically?

A Yes, sir.

Q About how much time do you spend in each one each year?

THE COURT: I do not think that is necessary.

Q Mr. Reinohl, there has been marked for identification a stock of branch office inventories, marked plaintiff's exhibit No. 17, Jacksonville Paper Company, for identification. I believe that you identified those as

containing the inventories at the end of the last fiscal year in the following branches: Orlando, Macon, Tampa, St. Petersburg, Lakeland, Miami and West Palm Beach?

A Yes, sir.

Q Do the adding machine slips on the top of each branch inventory represent the totals of the inventory for that period?

A Yes, sir.

Q Referring to the inventory for the Macon Paper Company, what was the total inventory on hand on May 31, 1940?

A The coarse paper division was \$32,434.35.

Q Do you have the fine paper inventory there?

A Yes, sir. The fine paper inventory was \$26,234.04.

Q Will you state what the inventories were at the Tampa branch at that time, coarse and fine.

A Tampa,, coarse paper, \$23,759.95.

Q What that both coarse and fine?

A No, that was just the coarse paper.

Q Fine paper.

A Fine paper, \$41,489.32.

Q What was the fine paper inventory at Lakeland on that date?

A Lakeland does not carry a fine paper stock.

Q What was the coarse paper inventory at Lakeland on that date?

A \$5,958.30.

Q Will you give the inventories for the St. Petersburg branch on that date?

A \$14,696.90.

Q Is that coarse or fine paper?

A Coarse paper.

Q St. Petersburg has no fine paper division?

A No, sir.

Q Will you give the inventory at Orlando on that date?

A Orlando, the coarse paper, \$10,413.32. //

Q Any fine paper at Orlando?

A Yes, sir, Orlando, fine paper, \$6,380.12.

Q What was the inventory at Miami on that date?

A Miami, coarse paper, \$47,042.20. Miami, fine paper, \$22,263.73.

Q Will you state the inventories for the West Palm Beach branch on the same date?

A \$11,549.34.

Q In the coarse paper department?

A Coarse paper only.

Q Does that cover all the branches in question?

A I think we have covered all of them.

Q Mr. Reinohl, has there been any appreciable increase in inventory over the preceding year?

MR. KURZ: Your Honor, if the only purpose of that is to show the branches handle a substantial amount of goods, I do not think that it is relevant to go into that, period by period, to show the inventories that were carried each time, and it tends to encumber the record in this case.

MR. DOWNING: It is just for this purpose, your Honor: To show the rapid rate of turnover. The answers to the interrogatories which have been supplied, and which will be introduced in evidence, show the amount of annual sales in all the branches, and the inventory measured against the sales will, of course, demonstrate the rate of turnover and the rate of movement of the goods through the warehouse. It is pertinent and it will only take the witness a few words to answer the question for the fiscal year 1939.

THE COURT: I think to save time we will let him answer the question. Go ahead and answer.

A Read the question, please.

Q (Question read).

A There has been an increase. As to just what percentage, I could not say without referring to the records.

Q Is it about in proportion to the increase in sales?

A Yes, I would think so.

Q Is the inventory on hand now greater than the

inventory on May 31, 1940, as far as you know?

A It probably is. I would not be in position to say.

Q Mr. Reinohl, you have identified as Plaintiff's Exhibit 10, Jacksonville Paper Company, the accounts payable records of the company. I hand you one of the looseleaf records representing the account with Calcasieu Sulphide Paper Company, and will ask you to explain what is the nature of the entries entered in the charge column.

A That is the payments that have been made to the mill.

Q From what record are those entries posted?

A A duplicate check is entered on the cash book and posted from the cash book to accounts payable ledger.

Q And from what record is the entry on the cash book made?

A From a duplicate of the check.

Q Now, will you explain the nature of the entries which are in the credit column?

A That represents the invoices that were purchased from these people.

Q The invoices of goods purchased?

A Yes, sir.

Q Does that record which you have there indicate how much of those particular materials were purchased for certain branches?

A Not on this record, no, sir.

Q Do you have a separate record for that?

A Yes, sir.

Q Branch record?

A Yes, sir.

Q From what records are entered the entries which appear in the purchase column?

A From the purchase journal.

Q And is the purchase journal in turn posted from entries from the sales invoices?

A Yes, sir.

Q Or in this case, it would be purchase invoices?

A Purchase invoices.

Q Does each of the entries in the credit column reflect a shipment of goods?

A I think so.

Q I hand you, Mr. Reinohl, from the same accounts payable records, twelve ledger sheets purporting to contain the current account with the Baltimore Sales Book Company of Baltimore, Maryland. Will you examine those and state if that is the current account with that mill?

MR. KURZ: Your Honor, I object to that on the same ground that I have already stated. It is complicated and shows a course of business that has an indirect bearing only on the issue before the Court. There are five hundred of those, and we would have to go through each one of them.

MR. DOWNING: I think we could confine ourselves to one or two of those as examples, and if counsel will agree that they are typical, that will be satisfactory. It has a bearing on the number of shipments received on the outside of all mills, the continuation of the stream of goods entering the Jacksonville warehouse, and through the Jacksonville warehouse to its customers.

THE COURT: I shall overrule the objection. We are not going into all of that.

MR. DOWNING: I do not want to, your Honor.

A This seems to be the current account of these people.

Q Does each of the entries in the credit column indicate a separate shipment from Baltimore Sales Book Company?

A Without answering that before I could answer your question definitely I would have to refer to the invoices.

Q Generally, do you know of any items entered in that column which do not represent shipments from the mill to the Jacksonville Paper Company or its branches?

A Yes. Occasionally there are items in this column.

Q What sort of items? What entries might be made there?

A The adjustments as to errors in prices.

Q Isn't it customary—is it customary to designate by symbols an adjustment then?

A Not in this ledger, no, sir, because in the journal entry there is reference to the year, date reference, and the machine which is used will not permit that reference and a symbol indicating an allowance.

Q Do you recall any substantial number of adjustments for the Baltimore Sales Book Company?

A No.

Q Generally, would you say, then, that the items in the credit column, each represents as shipment from the Baltimore Sales Book Company to the Jacksonville Paper Company or its branches?

The majority probably would.

Q By majority do you mean more than half or more than ninety per cent?

A Well, I would say more than half.

Q Do you think that the remaining forty-nine per cent probably represents adjustments ?

A No, sir.

Q What would they represent?

A I did not say that only fifty per cent represented purchases or deliveries; I said the majority of them would represent purchases. As to specifically how many adjustments there would be in those accounts, I would have to refer to the records. There may not be anything. I don't know.

Q Mr. Reinohl, are the purchase invoices of the Baltimore Sales Book Company filed in a convenient file or folder?

A For the past year, I would say yes.

Q Would they be readily accessible?

A I think so.

Q Would it be difficult for you to produce those so that they might be compared with the entries in this credit column?

MR. KURZ: I object to that line of questioning. We are not questioning an account here.

THE COURT: That is right. I do not think so. I do not think it is necessary to go into that detail, Mr. Downing.

MR. DOWNING: Your Honor, I would assume it would not be necessary to go into all this detail, but the witness answers indicate that he is not able to supply the requested information from the records produced.

THE COURT: He said that certain of them were adjustments. That is what I understood him to say.

THE WITNESS: There are very few adjustments.

THE COURT: It isn't necessary to count up and tabulate the total or the exact amount of shipments made. If you want to show the general course of business and general flow of goods, I do not think it is necessary to go into too much detail.

MR. DOWNING:

Q Other than adjustments, you say these items in the credit column will represent individual shipments?

A Yes, sir.

MR. DOWNING: Plaintiff offers in evidence the twelve ledged sheets representing the account with the Baltimore Sales Book Company, identified by the witness.

MR. KURZ: The defendants object to the introduc-

tion in evidence of these records on the ground that they are immaterial and irrelevant and do not tend to show any evidence pertinent to any issues in the case.

MR. DOWNING: Your Honor, this is one of about five hundred accounts Mr. Reinohl says are current. We suggest this offer be made as typical of the accounting system there; as typical of the accounts payable ledger. It contains large numbers of entries showing several shipments a day from the Baltimore Sales Book Company to the defendant. It shows a continuous stream of goods through the defendant's warehouses. We have no objection to a summarizing of it by the witness if that can be placed in the record.

THE COURT: I think that will be better. If that is a typical condition. It does seem that we could get at it without all the detail. And another thing, that is a permanent record of the company. I think it would be better to put it in as a summary in some way.

MR. DOWNING:

Q Mr. Reinohl, will you examine this account with the Baltimore Sales Book Company covering the period since October 24, 1938, and state how many sheets there are and how many entries are shown, front and back, in the credit column?

A Do you want the total for all sheets, or do you want the total on each sheet separately?

Q I suggest that you count the entries on your first sheet and state that there are so many sheets with that number of entries on the front and back of each one since the period of October 24, 1938.

A discussion was had off the record.

MR. DOWNING: I would like to designate the ac-

count of the Champion Paper & Fiber Company and the Eastern Paper Company.

THE COURT: You want approximately the number of shipments per week as reflected by those ledger sheets?

MR. DOWNING: The total number since October 24, 1938. He can get that by counting the entries on a sheet and multiplying the number of sheets.

A These entries don't go back to October 24, 1938.

Q When do they begin?

A This starts with April, 1939.

Q Is that the earliest record you have on that account?

A No, sir.

Q I mean here.

A Yes.

Q State the number of shipments made as indicated since that date.

A April 24, 1939, to February 17, 1941, there are ten sheets with approximately forty-five entries on each side.

Q That would be ninety entries to the sheet?

A Nine hundred entries.

Q How many are on this eleventh sheet?

A Fifty-eight.

Q Mr. Reinohl, during the noon recess will you check the entries on the Champion account and the Eastern account and be prepared to furnish similar figures for the record?

A Do you want those taken from the sheets that we have in the ledger here, or do you want me to get the sheets going back to October, 1938?

Q How far do those particular accounts run? Do you know off-hand?

A I don't know off-hand.

Q Is it for any substantial period?

A The sheets in the ledger cover quite a substantial period, yes.

Q Is it typical of the course of business since October 24, 1938?

A I think so.

Q It will be satisfactory, then, to start with this item, as I understand your testimony, Mr. Reinohl?

A Yes.

Q Except for the few adjustments which you indicate may have been made, there were approximately nine hundred and fifty-eight shipments from Baltimore Sales Book Company to the Jacksonville Paper Company since April 24, 1939?

A Yes, sir.

Q To the company and its branches?

THE COURT: Do the shipments all come to the Jacksonville Paper Company here and are they sent out

from here to the branches, or are some of the shipments made direct?

A The shipments are made direct to the branches involved.

THE COURT: From the manufacturer out of the State?

A Yes, sir.

MR. DOWNING:

Q Mr. Reinohl, are the payrolls for the branches prepared in the Jacksonville office?

A Yes, sir.

THE COURT: That has been answered.

MR. DOWNING: I am asking him about sending the money now. I do not think I asked about the payrolls, your Honor.

Q Do the branches keep a separate time record of their employees?

A Some of the branches do.

Q Do the branches at Tampa, St. Petersburg, Lakeland, Orlando, West Palm Beach, Miami, and Macon, Georgia, keep such records?

A Only where they have truck drivers employed who are under the regulations of the Interstate Commerce Commission.

Q Is the payroll prepared in Jacksonville in advance of the week-end on which the payments are to be made?

A They usually prepare it on Thursday.

Q Before receipt of any time records from the branches?

A Yes, sir.

Q Mr. Reinohl, will you describe the accounts or records which are kept under your supervision for the Southern Industries Company?

A Do you have reference to all the records that are kept for Southern Industries?

Q Yes.

A Cash book, journal, general ledger. I believe that takes care of all the principal records.

Q Is the price of raw materials purchased for Southern Industries charged against it on an account?

A How was that question, please?

Q Is the price or cost of raw materials purchased for Southern Industries Company charged to any particular account?

A The merchandise is charged—that is purchased for Southern Industries, is charged to them.

Q What account is that charged to? What is the name of the account?

A Southern Industries Company.

Q Is it known as the merchandise account?

A Do you have reference to the Southern Industries records?

Q Yes, sir.

A Well, then, that statement I made, being charged to Southern Industries, is incorrect, because if you have reference to the Southern Industries records, the merchandise which has been purchased from the Jacksonville Paper Company is charged to the merchandise account.

Q Charged to the merchandise account?

A Yes, sir.

Q Is the sales price of the goods, of the products of Southern Industries Company, credited to Southern Industries Company on the accounts of the Jacksonville Paper Company?

A Do I understand that question to be, the finished products purchased from the Southern Industries?

Q Yes, sir.

A You want to know if that is credited to the Southern Industries on the Jacksonville Paper Company's books?

Q Yes.

THE COURT: You are talking about Southern Industries' books, are you not?

MR. DOWNING: This particular item related to a charge on the books of the Jacksonville Paper Company.

A The merchandise that is purchased by the Jacksonville Paper Company from the Southern Industries Company is charged in the merchandise account of the Jacksonville Paper Company and credited to the Southern Industries.

Q And the raw materials are charged by converse entry?

A The raw materials are charged to the Southern Industries by the Jacksonville Paper Company, yes, sir.

Q Other than the raw materials which are charged against Southern Industries, what other charges does the Jacksonville Paper Company make against that account?

A Well, such expense items that might be paid for the account of the Southern Industries.

Q Does the Jacksonville Paper Company pay the employees of Southern Industries?

A No, sir.

Q Does it pay the rent for Southern Industries?

A The rent is paid and charged to the Southern Industries.

THE COURT: Gentlemen, we will take a recess now until two o'clock.

The witness was temporarily excused.

And thereupon Court was recessed until two o'clock p. m., of the same day, to-wit, Thursday, April 24, 1941.

And thereupon at two o'clock p. m. Thursday, April 24, court reconvened pursuant to adjournment of the morning session, and the following further proceedings were had:

THE COURT: You may proceed, gentlemen.

MR. DOWNING: I believe Mr. Reinohl was on the

stand as we adjourned. I had not quite finished with him.

MR. A. S. REINOHL,
having been previously duly sworn as a witness on behalf of the plaintiff, was recalled as a witness and further testified as follows:

FURTHER DIRECT EXAMINATION

BY MR. DOWNING:

Q Mr. Reinohl, until the date on or about July 1, 1940, were the employees of the shipping department at the plant of the Southern Industries carried on the payroll of the Southern Industries Company?

A Yes, sir.

Q What change was made on or about that date?

A The employees of that department, from that point on, were handled on the payroll of the Jacksonville Paper Company, as the Jacksonville Paper Company was handling the entire—handling the merchandise, both incoming and outgoing.

Q Until that date, they were employees of the Southern Industries Company?

A Yes.

Q That was July 1, 1940?

A Yes, sir.

Q And until that date they assembled and prepared for shipment, all products of Southern Industries, leaving the plant?

A For delivery to the Jacksonville Paper Company.

Q Do you know of your own knowledge, Mr. Reinohl, whether direct shipments were made from the plant to out of state branches and customers of Jacksonville Paper Company?

A To the best of my knowledge, they were not.

Q Do you have any personal knowledge of that?

A The merchandise would all be delivered either to Jacksonville Paper Company or to Jacksonville Paper Company trucks.

Q Do you know whether, as a matter of fact, direct shipments were made from the plant of the Southern Industries, prior to that date, direct to out of state customers and branches?

A I don't know of any.

Q Mr. Reinohl, have you checked the ledger sheets of the accounts payable ledger for the three accounts which were mentioned before the noon recess?

A I have, on the two accounts.

Q Which two have you checked?

A The Eastern Paper Manufacturing Company, I believe, it is.

Q Where is that located?

A I could not say as to that.

THE COURT: Speak louder, Mr. Reinohl.

A I am sure as to the location of the account.

MR. DOWNING:

Q Is it in the State of Florida?

A No, sir.

Q Is it in the State of Georgia?

A I am not sure what state it is in.

Q What about the other account?

A Champion Fibre and Paper?

Q What period of time is covered by those current accounts?

A The account of the Eastern Paper Company is from June 10, 1939, to March 31, 1941.

Q Approximately how many items appear in the credit column on the account

A 372.

Q In the case of the other mill you mentioned; the Champion—.

A Champion Paper & Fibre.

Q What period is covered—?

A From July 2, 1940 to March 4, 1941.

Q How many entries appear in the credit column on that account?

A 280.

Q Included in those shipments evidenced by the credit entries, Mr. Reinohl, are there shipments direct to company branches by the manufacturer?

A Some are from Jacksonville and some are direct to the branches, yes, sir.

Q Mr. Reinohl, do you know the location of the Champion Paper & Fibre Company?

A Hamilton, Ohio.

Q Mr. Reinohl, on yesterday you identified a batch of invoices evidencing shipment by the Miami branch to Nassau, which is marked plaintiff's exhibit No. 3, Miami. And also a batch of ocean bills of lading covering the same shipment, marked plaintiff's exhibit 4, Miami. Will you state for the information of the Court, the period of time covered by those shipments? Approximately.

A From April 1940 to January 13, 1941.

Q What date in April?

A April 24.

Q I will ask you to refer to the stack of bills of lading and see if you find any evidence of a shipment later than January 13.

A Yes, sir.

Q What is the latest date you found?

A January 16.

Q Does that appear to be the last shipment covered by that exhibit?

A Yes, sir.

Q Will you state, Mr. Reinohl, the approximate number of shipments evidenced by these exhibits?

A Well, apparently it is around, I would say, three hundred or more.

MR. DOWNING: Your Honor, we do not care to encumber the record with those exhibits, and I will state we have counted them and there are in excess of three hundred and fifty shipments evidenced by those exhibits. If counsel will agree to accept the appriximate accuracy of that statement?

MR. KURZ: We do not know how many there are, but there are a number of shipments. Without conceding it, we would say there are approximately that many.

THE COURT: Let the record show it.

MR. KURZ: With the objection that the testimony as to shipments to Nassau, are not within the Act.

THE COURT: Very well. Ruling on that will be reserved.

MR. DOWNING:

Q Mr. Reinohl, I believe you have testified that you, as auditor, are in charge or supervise the preparation of the payrolls,—?

A Yes, sir.

Q — of the company. Both for the main office and the branches.

A Yes, sir.

Q You are familiar generally with the rates of pay and the hours of work of the employees?

A Yes, sir.

Q Generally, do the employees of the Jacksonville Paper Company work the same number of hours each week?

MR. KURZ: We object to that question, your Honor. We think that question is too broad because there are a number of different types of employees and a number of different locations where different hours may be followed. It seems to me there has been testimony that the schedule of hours has been set up. That schedule would be the best evidence.

THE COURT: The question is pretty broad, Mr. Downing. I do not see how he can answer it.

MR. DOWNING: Yes, sir. I agree to that.

MR. DOWNING:

Q Mr. Reinohl, limiting that question to employees in the main office, and warehouse in Jacksonville, generally, does each employees work the same number of hours each week?

A Not always.

Q Do they work a fluctuating number of hours?

A Their schedule is approximately the same, but there are occasions when they have to work a longer period of hours, and there are times when the work within the schedule, or less hours than the schedule.

Q By the schedule, do you mean the schedule which was purportedly set up for the employees on April 29, 1940?

A I mean the schedule that was set up.

Q The hours I am inquiring about, Mr. Reinohl, are the hours they actually worked. Not any paper

number that may have been established by the company. My question relates to the number of hours of actual work. Do the employees work the same number of hours each week?

A Not entirely.

Q Then do I understand that they work a fluctuating number?

A They work approximately the same number, but there are circumstances under which the hours do fluctuate to some extent.

Q Has that been true since the effective date of the Act?

A It has always been true.

Q Was any change made in the hours of work or in wages paid either on October 24, 1938, or on October 24, 1939?

A Not generally.

Q Was any change made in contemplation of the effective date of the Act, or any change in standards under the Act?

A No, sir.

MR. KURZ: Your Honor, I think that question deals with a period that is so remote from the date of the filing of the bill of complaint, that it is immaterial and irrelevant.

MR. DOWNING: It has already been answered, your Honor, and it is to lay the basis of the background for the employment agreement.

THE COURT: Overruled.

MR. DOWNING:

Q Now, we come down to the date, April 27, 1940, Mr. Reinohl. Since that date, have the employees generally worked the same number of hours as they worked before that date?

A Approximately.

Q As a result of the arrangement which was put into effect on April 27, 1940,—not as a result, but did that arrangement contemplate any change in hours, actual hours of work, generally?

MR. KURZ: I think, your Honor, whatever they contemplated is immaterial and irrelevant. Changes made would be pertinent but not contemplated.

MR. DOWNING: I withdraw the question, your Honor.

MR. DOWNING:

Q Is it the present policy of the company to pay a full salary to a salaried employee when he may lose time due to illness or for vacation or similar causes?

A Yes, sir.

Q Was that also the policy before April 27, 1940?

A Yes, sir.

THE COURT: Do you have reference to all employees, or those that are on a salary?

A All employees on weekly salary, yes. Not those who are employed entirely on an hourly rate, as might be the case of outside labor. On extra labor voucher. Just those on regular payroll.

Q Do you have any regular employees who are on an hourly basis?

A No, sir, not regular employees.

MR. DOWNING:

Q Mr. Reinohl, are you familiar with the letters which were sent out and delivered to employees on or about April 24, 1940.

A Yes, sir.

Q Did you prepare those letters?

A No, sir.

Q Did you deliver any of the letters?

A Yes, sir.

Q To whom? Do you remember?

A To some of the employees in the Jacksonville office. I don't remember which ones.

Q Did you tell them to report back to work on Monday?

A I did not tell them to report to work. I told them they could apply for a position. If we needed their services, we would consider them.

Q Did they all report to work on Monday?

A I think so.

Q Did you interview any of them?

A They asked as to the employment. We didn't go through the formality of the usual interviews, as

to their past experience or qualifications, because I knew what that was.

Q What did the interview consist of?

Q As to whether or not we had an opening and had need of their services.

Q Do you remember any specific employees whom you have interviewed?

A Well, there were several. I don't remember the specific ones.

Q Did you interview Mr. Moran?

A I just stated I didn't remember specifically which ones.

Q Did you interview Miss Fullington?

A That same statement still holds good.

Q Or Mrs. Ruby Jones?

A The same statement still holds good.

Q You recall no particular individuals?

A Sir?

Q You recall no individuals particularly?

A That is what I stated.

Q So far as you know, did all of the employees, without exception, report back to work on Monday?

A I think they did.

Q All were immediately put to work?

A Yes, sir.

Q Who, if you know, advised them what their new salaries would be?

A I think I gave them the schedule.

Q Did the schedule contain anything other than the total number of hours they were supposed to work in a week?

MR. KURZ: Objected to on the ground the schedule would be the best evidence.

MR. DOWNING: As I recall it, we asked for the schedules—

THE COURT: Overruled.

A They were given copies of the employment notice, which gave the number of hours. The rate per hour for forty hours. The rate per hour for additional time above forty hours.

MR. DOWNING:

Q Mr. Reinohl, did the notice that was given at that time contain anything other than the total number, weekly, of hours that were supposed to be worked?

A Yes, sir.

Q Was an individual notice handed each employee?

A Yes, sir.

Q Was any general notice or bulletin posted on a bulletin board?

A There was a general bulletin issued.

Q Do you know whether individual notice actually reached each employee?

A I have reason to believe that they did.

Q I am asking you now as to your personal knowledge, Mr. Reinohl.

THE COURT: He has answered it.

MR. DOWNING:

Q Generally, Mr. Reinohl, were the employees employed for the same salary they had received before?

A In no instance was it any less.

Q Generally, was it the same?

A The same or a little more.

Q In a few instances did there result raises of a few cents in the weekly salary?

A From a few cents to probably a dollar or two.

Q Are you the representative of the company who worked out the details of the arrangement?

A Yes, sir.

Q As to the men who, before that time had worked the regular schedule,—the regular daily schedule from eight to six, and from eight to one on Saturdays, with an hour off during the first—in other words men who worked a work week of fifty hours; when they worked their regular daily schedule, will you explain to the Court the basis you used in preparing the new arrangement? New agreement?

A You mean as to the number of hours set up in the new agreement?

Q Just describe in general how you worked out the plan.

A We figured the approximate number of hours required for the regular duties.

Q Did you assume that it was 54 hours for the men?

A In some instances.

Q Even though they regularly worked the fifty hour week?

A In an office it is hard to say definitely that nobody ever works more than fifty hours a week. We took that into consideration.

A And you adopted the figure fifty-four. Does that represent six full days of nine hours each?

A Yes, sir.

Q Now describe how you worked out the new arrangement with your men, say who earned \$25 a week in the past. Will you explain that to the Court.

A If we set him—if his work required a fifty-four hour schedule, his rate of pay was based on forty hours at straight time and the additional fourteen and a half hours at time and a half time.

Q You mean actually fourteen hours?

A Actually fourteen hours, yes.

Q How did you work out the arithmetical calculation to arrive at that rate of pay?

A Well, it is comparatively easy. Fourteen hours at time and a half would be equivalent to an additional seven hours.

Q Well, that would be—

A It would be equivalent to sixty-one hours straight time for fifty-four hours work.

Q You divided that into twenty-five?

A Yes, sir.

Q What was that result? What did that represent?

A The base pay.

Q The base pay?

A Yes.

Q Then how did you set that up?

A That rate at—

Q On the books?

A That rate at forty hours, one and a half times that seven for the additional hours for which the schedule called.

Q Suppose it did not work out exactly even.

A Well, it would probably figure a little more.

Q You mean as a result of that they got ten or fifteen cent raises?

A It would make a little difference. You couldn't

make them figure out exactly right in every instance, no.

Q Except for the small raises, did it result in the same salary they got before?

A I would say yes,

Q Now, assuming you had a man of whom you estimated that a sixty hour week should be required. Would you figure out his salary in the same manner?

A Yes, sir.

Q And under that plan then his salary, also after the arithmetic was gone through, would be exactly what it was before?

A Either that or—

Q Either twenty-five dollars or a few cents more?

A That's right.

Q Now, as to the women in the office, the ladies who worked ordinarily from 8:15 to 8:20 to six, and from 8:20 to one on Saturday, which I believe equaled forty-eight hours also. Did you set them up at forty-nine and a half hours?

A Yes, sir.

Q Did they also, after the arrangement was worked out, receive the same salaries they had received before?

A The same or a little more.

Q A few cents raise, possibly?

A Yes.

Q Now after the arrangement was put into effect, did the employees continue to work the same number of hours, generally, that they had worked before?

A Yes. Unless it was necessary for them to put in a little over time. A little extra time, I would say, to complete their work.

Q But usually they worked the same hours they had worked before the arrangement was put into effect?

A Yes, sir. Because the hours before the arrangement was put into effect fluctuated to some extent. There might be some fifty hour schedule, or take fifty-four hours to complete their week's work.

Q Generally, before April 27, was it customary for any employees to leave their jobs or leave the office before six o'clock in the afternoon?

A Only on Saturday.

Q I mean in regular week days.

A No, sir.

Q And on Saturday was it ever customary for them to leave before one o'clock in the afternoon?

A Not as a general practice.

Q Generally since that date, has it been customary for employees to leave the office before six o'clock on any week day?

A Generally the week days, except on special cases.

Q On Saturday had it been customary for them to leave before one o'clock?

A Not customary, but it has occasionally happened, yes, sir.

Q After April 29, at what point did employees become entitled to overtime compensation above their regular salaries?

A At that point above the schedule for which they were paid.

Q A point above the number which you had set up for them?

A Yes, sir.

Q In other words, a man who had been set up for fifty-four hours would not receive any compensation above his regular salary until after he had worked more than fifty-four hours?

A No, sir, because he had already had time and a half payment for everything above the forty hours.

Q In the case of the ladies who had been set up at forty-nine and a half hours, did their extra compensation above their regular weekly salaries commence above forty-nine and a half hours?

A Yes, sir. For the same reason.

Q Between April 29, 1940, and a date on or about August 1, 1940, did the company pay over time compensation to some of its employees who had worked beyond the number of hours set up on the books?

A Yes, sir.

Q After August 1—the date of on or about August 1, 1940, had such over time compensation been paid?

A There have been some cases, yes, sir.

Q Are you referring now to the truck drivers for whom adjustments were made?

A No, sir.

Q What other types of employees do you have in mind?

A Two employees in the Mobile branch I have in mind right now.

Q What was the occasion for their receiving over time compensation?

A Because they had earned it. It was due them.

Q They had no accumulated hours charged against them?

A They had, but they had no accumulated credit hours on the records. They had been used.

Q Do I understand from that that the accumulated hours had already been used up?

A Yes, sir.

Q And they had gotten ahead of them, ahead of their accumulated hourly record?

A Yes, sir.

Q Are they the only two you can think of?

A They are the only two I think of just now. There may have been more.

Q Will you, at this point, explain to the Court when that accumulated hourly record was set up and what it purported to show?

A The record was set up on August 1, 1940, and actually shows the difference between the number of hours that have been paid for on the basis of the schedule we referred to and the time actually worked as shown by the time sheets that had been signed by the employees.

Q What employees in the main office keep that record of hours?

A J. H. Chastain.

Q Is that under your supervision?

A Yes, sir.

Q Did the company notify all of its employees at the time it commenced this accumulated hourly record?

A I am sure that they were notified, yes. I know the branches were, and I am sure the home office employees were notified verbally.

Q You mean by the branches, the manager of the branch was notified?

A Either the cashier or the manager, I wouldn't say which. They were notified by letter.

Q You don't know whether all employees were notified, do you, Mr. Reinohl?

A I am sure they were, but—

Q How are you sure?

A From reports that I have had from the branches.

Q From the employees?

A From the cashiers of the branches.

Q Have you received any reports from the employees?

A I have, some, yes, sir.

Q Have you received any reports from the employees of the main office and warehouse?

A Not in writing, no, sir.

Q Isn't it true that the knowledge that the employees,—such knowledge as the employees may have received, was indirect? Through hearsay?

MR. KURZ: That calls for an opinion of the witness, your Honor. As to what hearsay is. I think that is even troubling the lawyers.

MR. DOWNING:

Q I will confine it to indirect, then. Was not such knowledge as they may have acquired, indirect?

A I don't think so.

Q Between April 29, 1940; and August 1, 1940, did any employees receive their usual vacations?

A I believe so.

Q Did they receive their full salaries for the vacation period?

A Do you mean they received their full salary without any deductions, or just what do you mean by that question?

Q In the period, April 29, 1940, the date of the new arrangement, down to the date when the accumulated hourly record was begun, did the employees who took vacations receive their full weekly salary during the time they were on vacation.

A They did, except to the extent there was an adjustment made as to over time that had been made in the meantime. Of course the law does not compel a vacation. If you have paid for vacation time previously, then it is in order to make that adjustment. Vacations are entirely optional with the employer.

MR. DOWNING: I ask that the witness' answer be stricken. It is purely argumentative. It states his conclusion.

THE COURT: Didn't you ask for it ?

MR. DOWNING: I asked the question but the answer I got is not responsive. I am simply asking the witness to answer the question I asked.

THE COURT: Read the question, Mr. Reporter.

(The question was read, also the answer).

MR. DOWNING: From there on it is not material.

THE COURT: I will leave it stand.

MR. DOWNING:

Q Then do I understand from April 29 down to the date of the accumulated hours record, it was customary to deduct from the vacation salary, the amount of over time compensation that had been paid since April 27th?

A. Yes, sir.

Q Was that generally followed after August 1, 1940?

A No, sir.

Q You have referred—you have endeavored to explain why you followed that policy in between those dates. Why did you not follow it after August 1, 1940?

MR. KURZ: Your Honor, I think there is no requirement in the Act, or elsewhere, that vacations should be allowed with pay to employees. If a vacation with pay is allowed, whether with full pay, or deductions are made, I think it is in the discretion of the company, and what the policy was generally would be irrelevant. The statement has already been made of what has been done.

MR. DOWNING: This is relevant on the artificiality of the reemployment arrangement, to show that it was not actually a contract at all. This evidence all has a material bearing on the validity and regularity of that supposed or alleged agreement. I am trying to get the evidence before your Honor—

THE COURT: Isn't that for the Court to decide?

MR. DOWNING: I think your Honor can appreciate it.

THE COURT: Was there a change in the method of paying these men for vacations after a certain period from the method followed theretofore?

A After August 1st they received their full vacation period without regard to any overtime that was paid.

Q Prior to that time had there been any change in the rule?

A Only from August 1st.

Q Between those periods, there had been adjustments in the over time, with their vacation pay?

A Yes.

THE COURT: I think that covers it.

MR. DOWNING:

Q Was that at Mr. C. G. McGehee's direction, Mr. Reinohl?

A What portion of that?

Q From April down to August.

A You mean adjustment as to vacations?

Q Yes.

A I am not sure I had specific instructions as to that. I believe we discussed it, but I wouldn't say definitely at his direction.

Q Was it at his instruction that you abandoned the practice after August 1st?

A No, sir.

Q You just hit upon that yourself?

A Yes.

Q Now, after August 1, 1940, did some of your employees take their annual vacations?

A Yes, sir.

Q Were those vacation hours charged on the accumulated hour record?

A Yes, sir.

Q Since August 1st, have there been some employees who have been ill for some long periods of time? For example, Mrs. Virginia Harper, was she out for some time?

A Yes, sir.

Q And she received her full salary for the time she was out?

A Yes, sir.

Q Were her hours charged against her on the accumulated hourly record?

A Yes, sir.

Q During the time she was out?

A Yes, sir?

THE COURT: I am not quite sure I understand this accumulated hour record. Just what was the system on that?

A We kept time sheets, time records, on all employees. They are all paid on an hourly rate. A schedule is set up for a certain number of hours. For example, if they were on a fifty-four hour schedule and they get through with their work and only work fifty hours, they have been actually paid for fifty hours straight pay—they have been paid for time which they had not worked.

MR. DOWNING:

Q Since August 1st, 1940, have any employees terminated their employment with the company?

A I think so.

Q Was any settlement required of those employees for the hours that had been charged against them?

A No, sir.

Q Explain how the accumulated hour record is credited with the hours the employees worked over and above the number set up on the books?

Q MR. KURZ: Your Honor, that assumes something that has not been established. That there are hours worked that are not set up on the books. I do not think the question is proper.

MR. DOWNING: I will restate it:

Q Will you explain, Mr. Reinohl, how the present record of accumulated hours is credited in cases where an employee works beyond the number scheduled for him on the books of the company. The weekly number,

A He is given credit for the full number of hours that he has worked.

Q If there is any balance charged against him on the debit side of the record, does he receive any additional compensation?

A Yes, sir.

Q Well, how does he receive it? In money?

A In money.

Q I think you have misunderstood the question I am getting at, Mr. Reinohl. If there is a larger number charged against him than the number he has worked in excess of his book schedule, is not the only entry a credit against the accumulated number?

A No, sir. If he has worked more hours than his schedule provides for, and has used up all his accumulated hours as shown by the records during that same week, he is paid for whatever balance is due him.

Q I was asking about a stipulation where the accumulated hours had not been used up. Will you explain how the record is made in that case.

A I don't think I exactly understand your question.

Q I hand you the record of accumulated hours, identified by you as exhibit 13, Jacksonville Paper Company. I mentioned, I think, Mr. Moran on one other occasion. For the week ending April 19, 1941, it appears that you have charged against her a total accumulated hours of 225 hours and five minutes. If Mr. Moran in the next week worked, say, three hours beyond the number scheduled on your books for his scheduled number, what entry will be made on the accumulated record?

A This record shows the scheduled hours. It shows the number of hours worked. If the number of hours worked is in excess of the scheduled hours, it would reduce the accumulated credit hours as appear on the record.

Q Then the only entry is a credit against the hours charged against him in that case?

A Yes, sir.

Q That is the situation I was inquiring about from the beginning.

A Yes.

THE COURT: You mean this entry on the accumulated hours record?

A Yes.

MR. DOWNING:

Q In such a case does the employee receive any over time compensation above his regular salary?

A Not if he has a record of hours that has already been paid for.

Q We were talking about the instance just discussed.

A He has been paid for those number of hours, and has not worked them.

Q Will you just answer my question, Mr. Reinohl? Would he receive any over time compensation during that week above his regular salary?

A Not during that week because he has already been compensated.

MR. DOWNING: Your Honor, I ask that the witness' conclusion be stricken. The evidence does not show he has been compensated for anything.

THE COURT: Suppose, Mr. Witness, that Bill Grimes here was scheduled to work fifty-four hours; and Bill Grimes not only worked that fifty-four hours, but he worked four more hours, fifty-eight hours.

A Yes, sir.

THE COURT: What would happen about those four extra hours?

A Well, if—on the next line it shows he already had credit hours accumulated from previous week, and that extra four hours would be deducted from that accumulation.

THE COURT:

Q Of a prior week?

A Yes, sir. If he had no accumulated hours, he would be paid for in cash for that four additional hours.

THE COURT: I think that answers the question.

MR. DOWNING:

Q Has it ever been customary to credit those hours at time and a half the number of hours?

A No.

THE COURT: These four hours extra in the illustration I have just given you Bill Grimes had worked four hours extra and he has no accumulated credits. And he works four more hours than his schedule. Would you pay him straight time or time and a half?

A He would be paid time and a half for that additional four hours.

MR. DOWNING:

Q Time and a half the rate you had set up on your books for him?

A Yes, sir.

Q The rate you established by adding one half the number of over time hours to the total schedule, and dividing into the weekly salary?

A The rate that we have determined by using that method yes.

MR. DOWNING: Will your Honor excuse us a minute?

THE COURT: I did not hear that last answer.

THE WITNESS: The rate that we have determined, using that method, yes. Which is the base rate that we have determined at time and a half

THE COURT: I think we might as well take a five minute recess.

And thereupon an informal recess was had, thereafter the following further proceedings had.

THE COURT: Gentlemen, as I view the evidence and the law applicable under the admissions that have been made, and the proof that has been presented, it occurs to me that the only substantial question remaining, concerning which the Court would care to hear evidence at this time, is that as to whether or not the branches at Tampa, Lakeland, St. Petersburg, Orlando, Miami, West Palm Beach and Daytona Beach, and Macon, Georgia, are engaged in commerce so as to bring those branches, or the employees under the Act.

It appears from the evidence that the production company and the paper company, as well as all the other branches that have been admitted to be engaged in interstate commerce have not heretofore complied with the Act that there have been violations of the Act and that the Government has made out a prima facie case of those violations and is entitled to the issuance of an injunction, unless the facts are refuted by the testimony, and unless the weight of the evidence becomes involved. I am of the opinion that where violations of the Act have been shown or have been admitted, that the weight of authority sustains the view that an injunction is proper where it is not a private right that is involved on which the injunction is sought to

prevent an occurrence, but a public right is involved and a public agency seeks to protect a public right under the Act here, and would be entitled to that injunction here as protection to the public and as assurance that it would not be a repetition of those violations previously having occurred

Entertaining that view, I am going to direct that the evidence next to be taken shall be directed to the question of whether or not these branches that are not admitted to be engaged in interstate commerce, are in interstate commerce or not, and whether they are covered by the Act. Should the evidence of the defendant, when put on, raise some substantial and controverted question of fact, why, then I will permit the plaintiff to produce further testimony in regard to it.

I understand, Mr. Kurz, that as to those branches like in South Florida and in Macon, which I have just named, it was admitted in the pre-trial conference and is admitted, that compliance has not been had nor attempted to be had under the Act. Is that right?

MR. KURZ: That is correct.

THE COURT: Do you propose to show by this witness anything as to the volume of the business or nature of the business transacted in the business?

MR. DOWNING: The only possible one is as to Macon. I believe Mr. Reinohl testified Mr. Kurz had here the ledger sheet for the Macon branch. I wonder if that could be produced now. The Macon branch is one of those still in dispute.

THE COURT: I also believe that the general nature of the business transacted by some branch that is typical . . . one of the branches in dispute that is typical—would be shown as typical of all the others, and it will not be necessary to go into detail as to the business

transacted by each branch, but that you can pick out some branch that is typical, and it appears to me that all of the branches that do substantially the same sort of business, in the same sort of way or manner, I see no necessity for going into detailed evidence on each branch. Is that agreeable to you Mr. Kurz.

MR. KURZ: Yes, sir, with the privilege of the defendant to point out any differences that may exist.

THE COURT: Is that agreeable to the Government?

MR. DOWNING: Yes. The plaintiff desires to put in the case on the Tampa Branch, which we agree, with minor exceptions, and the defendant will agree, is typical with other branches.

THE COURT: Very well.

MR. DOWNING: Mr. Reinohl, I hand you a sheaf of ledger sheets purporting to represent out of state customers supplied through the Macon Branch. Are they the records covering those interstate sales and shipments?

A Yes, sir.

Q I note that these include an account with H. E. Poee; Columbus, Georgia. Are you familiar with that account?

A No, sir, I am not.

MR. DOWNING: The plaintiff offers for identification only the ledger sheets just identified by the witness, as plaintiff's exhibit, Macon No. 1.

(Addressing the Clerk) Mark those, please.

The instruments last above referred to were marked for identification as Plaintiff's Exhibit, Macon No. 1.

MR. DOWNING: No further questions.

CROSS EXAMINATION

BY MR. KURZ:

Mr. Reinohl, you testified about the number of entries on the ledger sheet of the Baltimore Sales Book Company.

A Yes, sir.

Q Do you have a total amount of those various entries?

A Not on the Baltimore Sales Book Company, no, sir.

Q What was the first one you testified about?

A That was the Baltimore Sales Book Company. I got the number of entries, but didn't get the amount on that account.

Q How does that compare in the number of shipments and amounts, with an average account with the manufacturers?

A Well, there are a great many more shipments on that account and they are smaller amounts the shipments run probably anywhere from seven to thirty dollars; all smaller shipments.

Q How about the Eastern Paper Company account; are shipments from that company obtained more frequently or less frequently than from the average account that you have?

A They are more frequent, and as to those items, I do not think each one represents a separate shipment

for the Eastern, because there is usually several invoices on one carload shipment.

Q What about the Champion Paper Company account; does that represents about an average account in number of shipments and the quantity or value of shipments?

A No. The shipments are heavier. There are more shipments and they amount to more money than the average shipper.

Q As to the branches at Savannah, Mobile, Pensacola, and Tallahassee, and as to the Jacksonville warehouse, is there any record kept of the hours of the employees?

A Yes, sir.

MR. DOWNING: Objected to, your Honor. My impression is that this issue has been removed from the case. Counsel now is going into the proposition of compliance since April 27, 1940. My understanding is that is the point we had eliminated.

MR. KURZ: I would like to show in the record, if the Court please, that we have kept a record of hours since a given date and that the payments made have been of not less than the minimum provided by the Wage and Hour law for the number of hours provided by that Act, with overtime payments made to employees who worked over the number of maximum hours specified in the Act. In order that the record on appeal may show that that is the contention of the defendants, that while there were some violations prior to April 27, 1940, in the case of the Jacksonville Paper Company, and prior to about January 1, 1939, in the Southern Industries, that since that time there has been a compliance with the provisions of the Wage and Hour law. I understand the Court has ruled that that testimony would be irrelevant and immaterial under the Court's

view of the law, but I would like the record to show that I proffer it.

THE COURT: You proffer it?

MR. KURZ: I proffer it.

MR. DOWNING: I have a further objection: That is not a matter which was gone into with this witness on direct examination. Orderly procedure would require that counsel submit that testimony as part of his own case.

THE COURT: We do not have to be technical about that, do we? I am of the opinion, Mr. Kurz, in view of the violations that have been shown and admitted, that that would not be a defense.

MR. KURZ: I understand the Court sustains the objection to that line of testimony?

THE COURT: Yes. Let the record show it was proffered.

MR. KURZ: No further questions.

MR. DOWNING: Just one or two questions on re-direct.

REDIRECT EXAMINATION

BY MR. DOWNING:

Q You said on cross examination, Mr. Reinohl, that the shipments from Baltimore Sales Book Company were smaller and more numerous. Do you know why they are smaller?

A Only that the orders do not amount to so much in dollars and cents.

Q Are they special orders for the most part?

A As to that, I do not know.

Q Does the Baltimore Sales Book Company print sales books with the names of the Jacksonville Paper Company's customers on them?

A I do not know, because they sell them both ways.

Q Why, in the case of the Eastern Paper Company, if you know, were several invoices included in one shipment?

A The only reason I—the only way I could account for that is there are so many items included in a shipment that their method of billing makes any number of invoices to cover one shipment.

Q Well, do portions of that shipment go to several branches?

A Not always.

Q Do I understand that the company makes a large number of different items and invoices each one separately?

A There are a number of items listed on an invoice but there are more items than can be listed on one sheet.

Q In those shipments from Eastern, are there included any items for direct shipments to customers?

A I don't know of any.

Q What about in the case of the Baltimore Sales Book Company?

A I don't know whether there are or not.

MR. DOWNING: That is all.

(Witness excused)

MR. CARROLL C. ROSS,
produced as a witness on behalf of the Plaintiff, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DOWNING:

Q Please state your name?

A Carroll C. Ross.

Q By whom are you employed, Mr. Ross.

A Jacksonville Paper Company.

Q In what capacity?

A Purchasing agent, fine paper department and sales department.

Q How long have you been purchasing agent?

A About four years.

Q What connection do you have with the sales department?

A Well, taking orders and answering the telephone; selling.

Q Are you in charge of the sales department?

A No.

Q Are you in charge of all purchases of fine paper?

A Not directly. I am sub-directly under Mr. McGehee.

Q Mr. C. G. McGehee?

A Yes.

Q Are the purchases for the following branches of Jacksonville Paper Company made by you: Macon Paper Company, at Macon; and the following branches in Florida: Tampa, St. Petersburg, Lakeland, Orlando, West Palm Beach and Miami?

A No. I only make purchases for the fine paper divisions.

Q Which of those branches do not have a fine paper division?

A Lakeland, St. Petersburg, West Palm Beach. Did you name all of them? I think you did.

Q I named only seven branches; six in the lower part of Florida, and the Macon branch.

A Yes.

THE COURT: Does Daytona Beach have a fine paper division?

A No, sir.

MR. DOWNING: Your Honor, we have omitted any reference as to that, that is, Daytona Beach.

THE COURT: All right.

MR. DOWNING:

Q Do you do the purchasing for the other four

branches named, namely, Macon, Tampa, Orlando, and Miami?

A Fine paper only.

Q I will hand you, Mr. Ross, what has been marked for identification as Plaintiff's Exhibit 15, and ask you what that is.

A That is the fine paper price list.

Q Is that a book with which you are familiar?

A Yes, sir.

Q I wonder if you will look through that quickly and mention for the Court's information the chief lines which are handled and distributed through the fine paper division.

A The chief lines?

Q Yes; the principal lines you distribute through your department.

A All of them in this book. This is the fine paper price book.

Q That book, as I understand it, contains a complete list of all items?

A That's right.

Q Which are the main lines, the principal lines which you deal in?

A Well, do you want them by name or by grade? Such as books, papers, or—?

Q What are the chief lines of book paper?

A Coated or uncoated? There are two grades.

Q I am not interested in getting down into as much detail as that.

A Well, it would be uncoated book paper and coated book paper. Uncoated books, for example, would be Lexington, English finish—.

Q I am not interested in the particular brand or names at this point. I want to know the principal lines you distribute. Is Kraft one?

A No, not in the fine paper division.

Q Is newsprint one of your leading lines?

A From what angle? Dollars and cents or tonnage?

Q Either angle.

A In tonnage it would be more of a leading line; as far as tonnage goes. From dollars and cents, due to its low scale, it could not rate with the others, such as book paper or bond paper.

Q Is bond paper one of your principal lines?

A Yes, sir, bond paper.

Q Is ledger paper one of your leading lines?

A No, sir, it is not a leading line.

Q Just intermediate?

A Yes.

Q What about envelopes?

A Envelopes are a very popular item. That would be a leading line.

Q What about printer's supplies?

A No.

Q Now, Mr. Ross, are those lines which you have indicated are the principal ones, also those that turn over the fastest?

A Yes.

Q There is a greater demand for those?

A Yes. They are the more principal items.

Q Will you state the names of the principal suppliers for those lines?

MR. KURZ: I object to that. I think that encumbers the record unduly. If counsel can ask whether most of them come from out of the state, that would be pertinent, but the names of manufacturers can have no bearing on the issue.

MR. DOWNING: Your Honor, I am trying to make this very brief and as quick as possible.

THE COURT: You can ask him whether he gets them from out of the state or not. I think that would answer the purpose.

MR. DOWNING: We also want it for the purpose of developing special agencies; exclusive agencies. We want to develop the name of the manufacturer and then establish that for many of those mills, or at least some of them, the Jacksonville Paper Company acts as manufacturer's agent; exclusive agent in this territory. We would like to get the identity of the supplier in first.

THE COURT: Come directly to it and ask him if they are distributing agents or manufacturer's agents for any companies, and if so, what companies.

Q Mr. Ross, does the Jacksonville Paper Company act as a manufacturer's agent for the Champion Paper & Fiber Company?

A No.

Q In any lines?

A No.

Q To refresh your memory, is not it the exclusive agent in this territory for the following lines of book papers: Forrest, Lexicon, Garmonde, Nanelow, Falcon, Refold, Satin Proof?

A You ask the question of Jacksonville Paper Company and the answer would be no. In the State of Florida, it would be, yes.

Q What portion of the territory does it act as exclusive agent for any of those lines, or any other lines?

A Well, in that particular line it would be in the State of Florida only. But for instance in Macon, and also the Savannah branch in Georgia, there are other distributors in the State of Georgia. The same would be true in the case of the Mobile branch. They have other distributors than our branch there, in the same state.

Q But in the State of Florida, your branches act as the sole distributor?

A No, as there is one other firm that has a branch office in Tampa that sells some of Champion's products.

Q Does it sell any of the particular lines you have just had mentioned to you?

A Yes, I believe they do.

Q What is that company?

A C. C. Palmer Paper Company.

Q Do you know the names of any other out of state manufacturers from whom Jacksonville Paper Company, in its territory, or any part of its territory, acts as exclusive agent for fine paper products?

A No.

Q To refresh your memory, does the Jacksonville Paper Company act for the American Writing Paper Company in the brand of L'Aiglon, in this territory, or any part of it?

A As a stocking merchant, yes, but any other merchant could ship in the territory, which wouldn't make the territory very exclusive.

Q What do you mean a "stocking merchant"?

A Carrying the line in stock in your warehouse.

Q You mean merchants outside of the territory could ship into the territory?

A Yes.

Q But as to merchants located in the particular territory, you have an exclusive agency?

A I don't know, because that one account that I mentioned, which carries some of their items also, whether they have that I don't know.

Q Does that mean that your expression "stocking merchants"—does that mean that the mill, the American Writing Paper Company, will not sell for stock to any other merchants in the territory?

A Unless they have a distributorship arrangement with some merchant. If they were to give us an exclusive distributorship in Jacksonville, for instance, they wouldn't give it to any other merchant in the same town.

Q Have they given you exclusive distributorship on any other items?

A Well, that would be general with the whole fine paper line. As a rule, in the fine paper business, there is only one agent appointed in a town by a mill, but any other distributor could ship into that town if he sold a customer an order.

Q Is that true of the brand names that you list for the Champion Paper & Fiber Company?

A Yes.

Q Does the company, in such case, represent the particular mill in that territory?

A To what extent? We represent them as far as selling the merchandise we bought from them goes, for our own gain or profit, but as for representing them in any other business dealings or purchases on anything they might make, we have nothing to do with that.

Q You mean you represent them in the distribution of their products in the territory?

A Yes.

Q Do you know, Mr. Ross, of any other out of state manufacturers for whom the Jacksonville Paper Company acts as distributing agent?

A Well, you would have Logan, Swift & Brigham.

Q Do you have an exclusive distributorship for them?

A No, sir.

Q In what part of the territory, if any—?

A None.

Q —Is your agency exclusive?

A None.

Q Are you exclusive agents for Atlantic Bond, manufactured by Eastern Paper Corporation, Bangor, Maine?

A To the extent of no other agent being appointed in the territory.

Q Are you responsible for the distribution of that mill's products in this territory?

A How do you mean, responsible for them?

Q Do they have any other general outlet for their products in this territory except through your company?

A As I said before in the other case, they can be shipped in by any other distributor out of town, such as Atlanta could ship into the territory.

Q Is there any other distributor in the territory?

A In the State of Florida? No. There is, both in Alabama and Georgia, though.

THE COURT: I think that the difference, Mr. Downing, between a merchant who purchases and one who acts as agent should be shown. Will you clear that up with him as to these items?

MR. DOWNING: All right, sir.

Q In the case of these agencies, Mr. Ross, as I understand your testimony, the mill will not sell for stock to any other distributor in that particular territory, although outside distributors may occasionally sell to customers in the territory?

A Yes, sir.

Q Now, has it ever occurred that the manufacturers—the mills—will receive orders from other distributors or other concerns in your exclusive territory and refer those orders to the Jacksonville Paper Company?

A Yes, sir.

Q Does that happen?

A Yes, sir?

Q How often does that happen?

A Oh, not often. I couldn't give you the number of cases, but it isn't anywise frequent.

Q In other words, even if your competitors were to attempt to purchase that particular line—your competitors in that particular territory, they would not be able to purchase it?

A Yes, they could purchase it.

Q From you?

A That's right.

Q Only from you?

A That's right.

Q They could not purchase direct from the mill?

A No, the mill would respect their distributorship with us.

Q Would you quote your competitors, under the circumstances, the same price you quote the other customers?

A No. I would give them the customary trade discount.

Q The trade discount?

A The trade discount.

Q Are any of the products of the Nekoosa-Edwards Paper Company, at Nekoosa, Wisconsin, fine paper items?

A You mean Port Edwards, Wisconsin?

Q Yes.

A Yes, sir.

Q Does the Jacksonville Paper Company act as distributor for the Nekoosa-Edwards Paper Company?

A We do in some lines and some lines—that is, some coarse paper lines, any of the coarse paper lines I wouldn't know anything about; and we are distributors for some of their fine paper lines, but not all of them.

Q Now, confining your testimony to the fine paper line, will you state whether there are any items in any of the territory on which it holds an exclusive agency for distribution?

A By exclusive agency, you mean distributorship with no other agent appointed in the same territory?

Q That is right.

A In the State of Florida, yes.

Q What lines of goods, what items?

A Nekoosa.

Q What about King Edward of Britain Paper?

A I couldn't answer. That's coarse paper.

Q Does Jacksonville Paper Company in any of its territory act as a distributing agent or exclusive distributing agent for Gilbert Paper Company?

A Well, if you break it down by branches you could say Jacksonville, but in Tampa it would be no. In both—

Q What about Miami?

A Miami, no. But in Tampa the same case exists there as with the American writing line. The same firm carries some of that mill's lines and they can ship it to any of these points.

Q Do I understand that you do have an agency at Tampa, or a partial agency?

A Yes. There is another firm there that has a branch in New Orleans that carries some of the same lines we do, and they supply them stock from that branch out of New Orleans, with the result that they could sell some of the same grades that we have.

Q So you have a competitor in Tampa that carries that line?

A Yes.

Q How many competitors are there in Tampa?

A Three; two and our branch.

THE COURT: M. Ross, what is the difference between a stocking merchant and distributor, if any?

A None.

THE COURT: In other words, the distributor buys the commodity from the factory and sells it?

A That's right. Resells it to his customer. The fine paper business, as a rule, they will not give a distributorship of a line unless you carry it in stock.

THE COURT: All right.

MR. DOWNING: Q In the trade, are the terms "stocking agent" and "distributing Agent", synonymous?

A Yes.

Q Does the company, Jacksonville Paper Company, in any of its trade territory, act as a distributing agent for the Crossett Paper Company, of Crossett, Arkansas?

A I don't know. That is coarse paper.

Q Mr. Ross, I hand you a folder bearing the name on the cover, "Champion Kromkote Labels" and on the back bearing the name "Jacksonville Paper Company, Jacksonville, Florida," and the names of several of your branches, including the Orlando, Miami, Macon and Tampa branches. I will ask you what that folder or bulletin is known as in the trade?

A Champion Kromkote labels.

Q Is the booklet what is known as a broadside?

Q No, a sample book.

Q Is that a book used by your salesmen in taking orders for the products described in the booklet?

A No. It could be used for that. It's a book that is given to printers for their files, for sample purposes, so that they may have it for reference in case of an inquiry for paper of that character.

Q What is the name of the manufacturer whose products are designated in that booklet?

A Champion Paper & Fiber Company.

Q Does the fine paper division carry any other items made by that company?

A Champion?

Q Yes.

A Yes.

Q Do you get shipments from Hamilton, Ohio; Canton, and Houston, Texas?

A No shipments from Houston, Texas.

Q You get shipments from Hamilton and Canton?

A Yes, sir.

Q Is this booklet printed by Jacksonville Paper Company?

A No, sir.

Q By whom is it printed?

A I don't know.

Q Is it printed by the mill?

A I doubt it.

Q From whom do you obtain it?

A The mill furnishes it.

Q The mill furnishes it to the Jacksonville Paper Company?

A Yes, sir.

Q Does the Jacksonville Paper Company act as distributing agent or exclusive agent for any of the types of paper described in that?

A We are distributors for the line of paper.

Q In this territory or only in Florida?

A Just in our territory where we operate.

Q In your entire territory?

A We have it in all branches, but we have other—other firms have it in those same territories; particularly out of the State of Florida. On that particular line there, that line is sold in rolls to box paper, or box manufacturers, and they sell all over the country where there is a box manufacturing plant, so there would be nothing exclusive about that line or paper.

Q What do box manufacturers use that paper for?

A Covering boxes.

Q What type of boxes?

A Set-up boxes.

Q What are set-up boxes, Mr. Ross? I don't know.

A Stiff, stand-up boxes; one that don't automatically fold up. You form and connect it, to make it set up.

Q What do they use those boxes for?

A Candy, shoes, anything in the world.

Q Do you have customers in all of your various branches?

A For Rolls?

Q For this type of paper.

A We do, for printers. The line we carry is in sheets and is only sold in sheets through proper merchants. The printer couldn't use it in rolls. We have to receive it in sheets.

Q Is this book printed when you receive it from the mill, the Jacksonville Paper Company?

A Yes, sir.

Q It already has the back cover on it with "Jacksonville Paper Company", name and so forth?

A Yes.

MR. DOWNING: Plaintiff offers this in evidence as Plaintiff's Exhibit, Jacksonville Paper Company No. 2.

MR. KURZ: I do not understand the purpose of this tender. If it is intended to show agency—

THE COURT: Well, it is pretty. Let it go in.

... The instrument last above referred to was re-

ceived and filed in evidence and marked Plaintiff's Exhibit, Jacksonville Paper Company No. 2.

MR. DOWNING: Your Honor, we have a witness here from Tampa, Florida, Miss Rose Allen, who is very anxious to catch the plane back to Tampa. I wonder if we might remove Mr. Ross and put her on out of order

THE COURT: I suppose we can do it to accommodate the lady. Is there any objection, Mr. Kurz?

MR. KURZ: No, sir.

MR. DOWNING: We will excuse Mr. Ross, subject to recall.

. . . The witness Ross was temporarily excused.

MISS ROSE ALLEN,
produced as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRODIE:

Q Will you state your full name, please?

A My name is Rose Allen.

Q And you live in Tampa?

A Yes.

Q In what business are you, Miss Allen?

A We are in the printing and publishing business.

Q You say "we". With what company are you associated?

A Florida Grower Press, Inc.

Q How long have you been associated with the Florida Grower Press, Inc.?

A Ten years.

Q In what capacity?

A As secretary and auditor.

Q What is the business of the Florida Grower Press?

A We do printing and publish the Florida Grower magazine.

Q Will you please describe to the Court what type of printing you do?

A We print letterheads and stationery and booklets, folders.

Q Do you also do any printing of labels?

A Yes, we do.

Q What kind of labels?

A Box end labels for citrus fruits and vegetables.

Q And to whom do you supply those labels?

A To the packing houses and shippers in the State of Florida.

Q Does your company buy any paper from the Tampa Paper Company?

A Yes, we do.

Q Do you know whether that is a branch of the Jacksonville Paper Company?

A I understand it is.

Q What kind of paper does your company buy from the Tampa Paper Company?

A We buy bonds and sulphides and tag board and book paper, and—

Q What? I am sorry. I did not mean to interrupt you.

A That is all right.

Q Are you finished?

A Yes, sir.

Q What do you mean by book paper?

A That is paper that is used for printing folders and advertising matter and printing of that type.

Q Is that commonly a glossy coated paper?

A Yes, it is.

Q What is that book paper user for?

A It is used for printing these advertising folders and booklets and pamphlets and matters of that kind.

Q Is any of the paper that your company purchases from the Tampa Paper Company used in printing labels?

A Yes, sir; a small portion of the labels we produce.

Q Approximately how many labels does your company print annually?

MR. KURZ: We object to that question unless it is limited to the labels printed from products of the Jacksonville Paper Company.

THE COURT: Yes, I think so.

MR. BRODIE: I was just getting to that. She said a small portion is.

THE COURT: All right.

MR. BRODIE: May the witness answer the question.

THE COURT: Yes.

Q Will you answer the question?

A Approximately, you understand?

Q Yes, ma'am.

A Approximately, Oh, two hundred and fifty million.

Q Two hundred and fifty million labels?

A Yes, sir.

Q Annually?

A Yes, sir.

Q In 1939—I withdraw that question. Is the business of supplying labels to the packers a seasonal business?

A Yes.

Q And does the season run from one year into the

next year, one calendar year into the next one?

A Yes, sir.

Q For the season 1939 to 1940, do you know whether your company purchased any paper used for labels,—for convenience sake I will call it "label paper,"—from Tampa Paper Company?

A We bought a small amount.

Q How much?

A Oh, between a hundred and a hundred and twenty reams. It was one order.

Q How many pounds was that?

A Oh, about 10,700 pounds, something like that; just off-hand, you understand.

Q Yes, I understand. And that was used for printing box end labels, was it?

A Yes, sir.

Q Approximately how many labels would ten thousand pounds of paper, purchased from the Tampa Paper Company, for that season, account for?

A About a million and a half, I guess.

Q Do you know, Miss Allen, whether the fruit crates on which those labels are pasted are shipped out of the State?

MR. BRODIE: Or, will the Court take judicial knowledge of that?

A I wouldn't know, because I don't ship them.

Q You do not ship the fruit crates?

A No, sir.

Q For the season 1940-1941, did you purchase, or rather, did your company purchase any of this label paper from the Tampa Paper Company?

A Yes.

Q And was that label paper used for the printing of labels for fruit crates?

A Yes; fruit and vegetable.

Q Have you any—strike that. How much did your company purchase from the Tampa Paper Company for the season 1940-1941?

A You mean in labels produced?

Q Well, I am going to see how much in quantity of paper, and then translate it into labels produced.

A We bought a carload.

Q Can you tell the Court approximately how many labels a carload of paper would account for?

A I—.

Q Well, suppose we approach it this way: You have already testified that ten thousand pounds would account for approximately a million and a half labels. Do you know how many pounds are in a carload?

A (No response).

THE COURT: Was all of that carload used to print labels?

A Yes, sir.

THE COURT: Go ahead.

Q Would that carload account for several million labels?

A Yes.

Q Do you also use book paper which is supplied by Tampa Paper Company for advertising literature and folders?

A Well, I assume the book paper would eventually possibly be used for it. It is put on our floor, our purchases from them. We purchase book papers from other companies, too.

Q Yes, ma'am. Is there any use, apart from labels for book paper, than folders and books? That your company makes?

A A lot of uses. I can't think right now of it all; but a lot of uses other than that.

Q What are the principal uses of that paper?

A I beg your pardon?

MR. KURZ: Your Honor, it seems to me that is going far afield. The lady said she did not know whether of this book paper was used for folders. She assumed it could have been.

MR. BRODIE: I am just trying to—

MR. KURZ: We are objecting to it.

MR. BRODIE: I am trying to develop from this witness, by excluding other probabilities. I think I have that right.

THE COURT: Go ahead.

. . . The question was read.

A I thought I had answered that.

THE REPORTER: You said, "I beg your pardon".

A You mean this book paper in general?

MR. BRODIE: Q All the book paper that you purchased from Tampa Paper Company.

A Well, I would have to look back at my records to specifically say that we printed a certain booklet from it.

Q I am not trying to develop that. I am not asking you that. I am asking you, in general, what is that book paper used for?

A You are talking about this glossy paper?

Q Yes.

A For folders and booklets, and as you call it, advertising matter.

Q What sort of folders and booklets and advertising matter? What do they advertise?

A Oh, everything from—.

THE COURT: Soup to nuts!

A Yes, sir.

Q Hotels?

A Yes, sir.

Q Chambers of Commerce?

A Yes, sir.

Q Is any used for publishing air line schedules?

A Yes, sir. You understand, sir, this is book paper?

Q Yes.

A Purchased from any paper company.

MR. BRODIE: No further questions.

CROSS EXAMINATION

BY MR. KURZ:

Q Miss Allen, can you state whether or not any of the paper purchased from Tampa Paper Company was used for any of those specific—any particular one of the specific uses that you mentioned?

A I couldn't without looking back at my records and determining that that was the paper that was used for the job; that it was from the Tampa Paper Company.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. BRODIE:

Q Miss Allen, in giving that answer, do you except the ten thousand pounds of label paper?

A Oh, I beg your pardon. We did print labels on that and used it for other purposes.

MR. BRODIE: That is all.

(Witness excused)

MR. KURZ: Your Honor, we have some subpoenas for the manager of the Tampa branch and two other employees of the Tampa branch, and if it is possible, we would like to have them put on the stand this afternoon so they can be excused and return to their duties.

MR. DOWNING: I do not think it is possible to conclude that testimony this afternoon. We have delayed having them come up here, trying to time their arrival to work it out right. We missed it one day, which is pretty good, considering the case was set for Monday.

THE COURT: You have two witnesses from Tampa?

MR. DOWNING: Three, your Honor.

THE COURT: Possibly you could get rid of one of them and let one of them go back.

MR. DOWNING. Mr. Brodie can answer that better than I can. He intends to put them on.

MR. BRODIE: I do not know what time you intend to adjourn, but I doubt if I can finish by five o'clock.

THE COURT: Proceed.

MR. BRODIE: I say I doubt it.

THE COURT: What about the others? Can't you finish with one of them?

MR. BRODIE: Well, I don't know whether I can or not, but ~~may~~ I just look at my notes a moment?

THE COURT: Yes.

MR. BRODIE: Probably the shortest witness of the three will be the manager—.

THE COURT: All right, put him on.

MR. BRODIE: I was about to suggest—

THE COURT: We will try to conclude with him before we finish.

MR. BRODIE: I was going to suggest, your Honor, that it would greatly interfere with the order—

THE COURT: Well, the order won't matter.

MR. JAMES R. WILLIFORD, JR.,
produced as a witness on behalf of the plaintiff, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRODIE:

Q Mr. Williford, please state your full name.

A Beg pardon?

Q Please state your full name.

A James R. Williford, Jr.

Q By whom are you employed?

A Tampa Paper Company.

Q How long have you been employed by the Tampa Paper Company?

A Fifteen years.

Q In what capacity?

A Manager.

Q Manager of the entire company, or manager of a particular department?

A Of the particular department.

Q What department?

A Coarse paper department.

Q The Tampa Paper Company is a branch of the Jacksonville Paper Company?

A Yes, sir.

Q As a result of your experience, are you thoroughly familiar with the business of the Tampa Paper Company, in the coarse paper department?

A Some phases of it, yes.

Q Are you familiar with the extent of the territory served by the Tampa Paper Company?

A Yes.

Q Will you please tell the Court what that territory is?

A As far north as Dunnellon and as far south as Fort Myers.

Q How about east of Tampa?

A Haines City.

Q Sir?

A Haines City.

Q Haines City?

A Yes.

Q Does your company also serve Sebring?

A Sebring, yes, sir.

Q And St. Petersburg and Clearwater?

A Our company, but not Tampa, serves St. Petersburg. Tampa serves Clearwater.

Q Has Tampa ever served St. Petersburg?

A Yes.

Q How many salesmen are employed at the Tampa Paper Company?

A In the coarse or fine paper department?

Q Coarse Paper department.

A Seven.

Q And approximately how many customers do those salesmen visit?

A Per day?

Q No. How many customers do each salesman—?

A Well, they—the salesmen aren't assigned customers. They are assigned a territory to work.

Q I see. Has each salesman a regular territory?

A Has each salesman a what?

Q Has each salesman a regular territory?

A Yes.

Q And does each salesman cover his territory regularly?

A Yes.

Q Do you know whether each salesman makes regular visits to each customer in his territory?

MR. KURZ: Your Honor, I think that is again going into a lot of detail.

THE COURT: Well, if he doesn't, he ought to. I do not think it hurts to answer it, but I think that is more of a matter of common knowledge, isn't it?

MR. BRODIE: Well, I don't know.

Q Will you answer the question?

A The question again?

Q The question is, whether your salesmen make regular visits to their customers in their territory.

A If he doesn't, he should.

Q Do you know, Mr. Williford, how frequently the salesmen visit their customers?

A The city salesmen or the country salesmen?

Q Well, we will take the city salesmen first.

A Some of them every week, some of them every two weeks, some every four weeks.

Q And how about the country salesmen?

A Some every two weeks, some every four weeks, some every six weeks.

Q Will you describe to the Court what happens when a salesman brings in an order from a customer?

A What happens when a salesman brings in an order?

Q Yes.

A Now, this is a city salesman?

Q Is there any difference between the method of handling city orders and country orders?

A Well, to this extent: That of course the city salesman turn the orders over to the bookkeeper to pass on the credit, whereas I usually may open the mail and pass the orders on to the bookkeeper, if they are country orders.

Q Do country orders come in by mail?

A Yes, sir.

Q All right. And after the bookkeeper gets the order, what is done with a view to filling that order?

A It's O. K'd. for credit and passed on to the shipping department, the order is gotten up and delivered to the customer.

Q And who is responsible for the inventory in your warehouse, of coarse paper items?

A Now, do you mean in ordering the merchandise, or the shipping of it?

Q No, I mean in maintaining the control over your inventory, how do you know whether you have goods on hand? Whether you need to reorder goods and so forth?

A I order the merchandise.

Q And how do you determine when you have to order?

A The usual procedure is that there is a day set aside each week, usually Thursday afternoon, that I go through the inventory,—go through the stock and make up a short list and then order.

Q From whom do you order?

A I requisition to Jacksonville.

Q And do you know what happens in Jacksonville to your requisition?

A It must go to the mill, as we get the merchandise.

Q And from whom do you get the merchandise, Jacksonville or the mill? Assuming it is merchandise supplied by someone other than the Southern Industries.

A From the mills.

Q Direct?

A Yes.

Q As a result of your experience in the business, are you able to anticipate approximately your orders to fill the demands of customers?

A Yes.

Q In the coarse paper business, is the demand of customers fairly constant?

A Some items, yes; some very slow.

Q Do the customers generally order in recurrent amounts, the same type of merchandise, each time the salesman visits them?

A Not necessarily, no.

Q I did not say necessarily. I said generally.

A Yes. There are some items that are ordered in usually the same amounts, as a week's, or a month's supply, depending on the size of the store.

Q And do you carry those items in the warehouse in anticipation of that demand by the customers?

A Oh, yes.

Q And what happens when the customer departs from the pattern and wants something you do not have in stock?

A Sometimes we order it for him.

Q Do you, or does the Coarse Paper Department handle sales books?

A Yes, sir.

Q Do you know where those sales books come from?

A Baltimore, Maryland.

Q Are those sales books—are there any such sales books printed especially for the customer to whom you deliver them?

A Yes.

Q Who prints those sales books, if you know?

A Baltimore Sales Book Company.

Q Do you ever order printed sales books without an order for them?

A With the names on them?

Q Yes.

A Oh, no.

Q Mr. Williford, how do you make deliveries to your customers?

A By truck.

Q Do your trucks follow the regular routes?

A Yes, sir.

Q How frequently do your trucks cover their territory?

A In the city or the country?

Q Well, we will take the city first.

A Well, we may deliver to one man once a day; maybe another one once a week.

Q Is there any particular schedule on which you send your trucks out to cover your territory? Is there any regular—?

A No, we deliver all the orders as the orders come in.

Q Oh, I see. Then the route of the truck driver is not a particular route, or regular route? You send him out specially?

A Well, there are times he goes out with a special order, yes; perhaps someone is out and needing something quickly.

Q And how about the country, how is that handled?

A That, of course, is about the same as the city, except that the orders moving in from salesmen are delivered sometime within the next few days.

Q Now does your company, Mr. Williford, ever handle, or did it ever at any time accept orders which required direct shipment from the mill to the customer?

A Yes.

Q And how were those orders handled?

A They were O. K'd for credit, requisitioned to Jacksonville; Jacksonville sent the order to the mill and the mill shipped the merchandise to the customer.

Q And how was that order billed to the customer?

A How was it billed?

Q Yes, sir. Was it billed from Jacksonville or billed from Tampa?

A Billed from Tampa.

Q Mr. Williford, what types of carriers bring goods from out of the state to the Tampa Paper Company?

A Railroads, steamship lines, truck lines.

Q Does your warehouse have a railroad siding?

A Yes, sir.

Q On these rush orders that you were telling me about a little while ago, did your company ever pick up the order at the carrier and have the goods loaded on the truck and deliver direct to the customer?

A Did we ever do that?

Q Yes, sir.

A Yes—wait a minute, Mister; not without coming to the warehouse to be checked.

Q I see. To check it in as part of the inventory?

A That's right.

Q And was that also the practice occasionally with reference to orders coming in by boat?

A Well, they all came into the warehouse to be checked. We didn't take the driver's word for it. We had to know that the merchandise was on the truck.

Q And the merchandise did not come into the warehouse?

A Yes.

Q Oh, it did come into the warehouse?

A Yes. It came up in the drive court of the warehouse.

Q But it was not unloaded from the truck?

A Not every time; and not all of it. Some of it had to be unloaded, to be counted.

Q And was there any change made in that practice?

A Yes, sir.

Q Approximately when?

A If I recall correctly, it was about sometime the latter part of January.

Q Of what year?

A This year.

Q And what change was made, Mr. Williford?

A We now unload the merchandise in the warehouse—

Q Yes.

A Then it's checked and sent out at our convenience; or if the customer is in a hurry, then, of course, it goes out sometime during the day.

Q Apart from that, has there been any change in—strike that, please. With respect to that type of merchandise, has there been any change in the source of it?

A No.

Q That is, it still comes from the mill?

A Yes, I believe so. I don't think that we have changed any mills, had any new mills. I don't recall any.

Q And does the merchandise go to the same customer?

A I don't know whether the merchandise goes to the same customer or not.

Q Well, assuming that formerly, before you made this change, you supplied certain customers by taking the goods from the boat and not unloading them in the warehouse, but leaving them on the truck and shipping them to the customer; is your practice now with regard to the same or similar merchandise for the same customer, to unload the goods in the warehouse and then put them back on the truck and ship them on?

A Yes, the merchandise is unloaded from the truck.

Q That is the only change?

A Yes.

Q Now, with respect to direct shipments to customers, Mr. Williford, has there been any change in your method of doing business?

A Say that again.

Q I say, with respect—no rabbits up my sleeve—with respect to direct shipments to customers, has there been any change in your method of doing business?

A Since then?

Q Well, at any time in the last two years.

A Nothing other than what has been mentioned that I can recall.

Q I see. So that your company still accepts orders for direct shipments from mills to customers?

A Oh, no; no, no.

Q Well, that is what I was driving at.

A No.

Q What change has been made there?

A Well, the orders, of course, are O. K'd. as usual, and they are reported to Jacksonville and the merchandise is brought into our warehouse and then delivered at our convenience, or if the customer is in a hurry, sometime during the day.

Q I am not sure that I made myself clear on that. I am talking about shipments from a mill direct to the customer. Have you discontinued that type of business?

A Yes.

Q Is it not a fact, Mr. Williford, that your method now is to have the goods billed from Jacksonville rather than from Tampa, on orders for direct shipments which you receive from customers?

A Any merchandise that moves from the mill to the customer direct, now—direct to the customer—.

Q Yes.

A Is billed by Jacksonville.

Q And is no longer billed by Tampa?

A No, sir.

Q The order, however, still comes into Tampa?

A Yes, if we get that particular order, yes.

Q That is what I mean. Now, Mr. Williford, were those changes made contemporaneously with the taking of depositions in this case down in Tampa?

A That I can't tell you.

Q Well, do you recall when depositions were taken.

A Well, let me see. It must have been about six weeks ago, wasn't it?

Q You were a witness, were you not?

A About six weeks ago.

Q I believe it was in February. I will give you the date: February 5, 1941. Was that change made at about that time?

A I don't remember.

MR. BRODIE: I have no further questions.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Williford, you stated that St. Petersburg is served from the Tampa branch. Do you mean by that the Tampa branch has customers in St. Petersburg?

A No, no. I say it is not served from Tampa.

Q I misunderstood you, then. In regard to recurring orders made by customers, I believe you stated that the customer would order substantially the same goods, periodically; but you had no contract—no definite contract to supply them in the future, did you?

A No, sir. It's hard, unless you know—just off the iron,—as to just when it would be as to the reorder—.

Q Do you mean by that, that usually the same customer would require about the same amount of goods and he would probably order it again from you? Is that what you meant?

A Yes, it's usually running along the same lines. Of course, they buy different articles from us.

Q He might not order and he might?

A And he might order them, yes.

Q Who handles the orders for shipments to be made

direct to customers, direct from the mill, I mean? Who at Tampa handles those orders?

A I do.

Q What do you do?

A Well, the order is first O. K'd. for credit before it ever leaves our office—.

Q Who does that?

A Mr. Miner—.

MR. BRODIE: If your Honor please, I would like to interrupt and object to that line of questioning on the ground that is one of the matters we discussed in chambers and one of the things I anticipated might arise. The question was, if we proved interstate commerce, whether the defendant was going to attempt to prove that the employees themselves were not engaged in interstate commerce. This line of questioning is apparently directed to that type of thing, and for that reason I object to it.

THE COURT: Overruled.

MR. KURZ:

Q Who is Mr. Miner?

A Our bookkeeper.

Q Then what happens?

A After the order is O. K'd., is it sent to Jacksonville.

Q Who sends it to Jacksonville?

A I do. That is, I make the order out and order the merchandise.

Q And as I understand it, Jacksonville orders it from the mill and it is shipped direct to the customer?

A That's right.

Q Do you know how much those orders amount to in the course of a year, with reference to the total business done by the Tampa branch?

A Direct shipments?

Q Yes, sir.

A That is a rather hard question, Mr. Kurz. Perhaps—maybe half of one per cent; maybe three-quarters.

Q With reference to special orders placed for particular customers, particularly sales books that are printed with the name of the customer, can you state how much that would amount to in percentage of total business during the course of a year?

A It would be a guess. Perhaps—.

MR. LEWIS: I object to any guesses.

THE COURT: Overruled.

A Perhaps one-twentieth or one-fortieth of our volume.

Q It is a very small—.

THE COURT: What is a salesbook?

MR. KURZ: That is these little books that the stores use for writing up orders.

Q That is what it is, isn't it?

A Yes, that's right; used by grocery stores.

Q Did you say one-fortieth of your business?

A That would be a guess, yes, sir; one-fortieth.

Q One-fortieth of your total volume?

A Perhaps that much. It would be just a guess in the dark.

Q In other words, about two and a half per cent; is that it?

A No, no, no; about one-fortieth of one per cent. No, no. That is almost half of one per cent.

THE COURT: I always had trouble with fractions, too.

A Well, it's so small that it doesn't amount to anything, I wouldn't think.

Q When goods are received at Tampa from the mills or from the Jacksonville Paper Company, what is the usual method followed in the handling of those goods, the incoming merchandies?

A Well, the merchandise, of course, is handled by our own truck. It is not, in every case, either. But the merchandise is checked in by the shipping department or receiving department and placed in stock in its particular place. If it's merchandise for stock.

Q Do you know usually where and when that particular merchandise is going to be sold?

A Yes, I have a pretty good idea before it is ordered.

Q I mean, do you know what particular customer is going to get any particular part of that?

A Oh, no.

MR. BRODIE: I object to that question and move the answer be stricken. The witness already answered the question.

A I didn't hear the question asked. I apologize.

*The question and answer were read.

THE COURT: Overruled.

MR. KURZ:

Q Then if I understand you, the usual method followed is for incoming merchandise to be placed into the warehouse, in stock?

A Yes, sir.

Q And I believe you testified that sometimes the customer would be in a hurry and there would be a departure from that usual procedure?

A Yes.

Q Can you state whether that happens very frequently or not?

A Now, do you mean merchandise that is ordered for stock, or merchandise that this particular customer may be interested in?

Q Well—

A I have in mind this: Perhaps we are out of—

Q Just explain that, will you, please?

A Well, take for example a seasonable item like an ice cream cup. Our stock may be low; might be out. I know that this customer is needing some. When the order gets in and I know that he is out, why, part of this merchandise goes to him and the other part goes right in stock.

Q How often would that happen in comparison with your usual method of business?

A Well, that would be—perhaps it would happen two or three times a month.

Q On those special orders to the Florida Growers Press, do you know how many orders you filled for them in the course of a year?

A No, sir.

Q Is that book paper that you sell to Florida Growers Press, special stock for them, or is that stock idle?

A Mr. Kurz, that is not my department. I don't recall. I don't know anything about that.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. BRODIE:

Q Mr. Williford, referring again to these sales books, have you any idea how frequently you receive shipments of sales books from the Baltimore Sales Book Company?

A Printed books?

Q Yes.

A Two,—three times a month.

Q Now, on items for which you do not have a contract, you have to anticipate the demand of the customer, do you not?

A Plain stock merchandise?

Q Yes, sir.

A Yes.

Q For items that you have a contract, you order to fill that contract, do you not?

A Yes.

Q And what are such items you order to fill contracts?

A There is some cottage cheese cups for Poinsettia Dairies.

Q Are there any others?

A Yes, cottage cheese ^{tubs} for Tampa Stock Farms Dairy.

Q Are there any others?

A Not that I can recall.

Q And how many items do those contracts to which you have referred call for? For how many cottage cheese cups for the Poinsettia Dairy is your contract?

A I think the contract is for two hundred and fifty thousand.

Q To be supplied at periodic intervals, or all at once?

A No, at different times as needed.

Q And has that contract been fully supplied, or are you still in the process of filling it?

A I think the Poinsettia Company contract has expired—no, it hasn't, either. That hasn't expired.

Q That has not expired?

A No, sir.

Q How about the contract with—what was it? The Tampa Better Milk?

A Tampa Stock Farms Dairy.

Q How many cottage cheese pails does that require?

A That isn't the contract. By that I mean it isn't printed merchandise. There is an understanding with the mill. There is no contract. It's just an understanding that the merchandise is to be shipped as the customer requires it and in the event of an advance he is to be given notice before the prices change.

Q Have you recently entered into a contract for ice cream cups, the supply of which will start July 1st?

A Yes.

Q With what company?

A Poinsettia Dairy Products.

Q For how many ice cream cups?

A Five million—three million.

Q That is all—no, just one question. Where do those ice cream cups come from?

A Kensington, Connecticut.

Q Do you carry three million ice cream cups in stock?

A No, sir, not in stock.

MR. BRODIE: Thank you. That is all.

MR. KURZ: That is all.

(Witness excused)

THE COURT: May this witness be excused?

MR. BRODIE: Yes, your Honor.

THE COURT: Court will take a recess until nine thirty tomorrow morning.

MR. DOWNING: In view of your Honor's ruling as to the lack of necessity for proving violations locally, we have a number of witnesses we might excuse, subject to recall, subject to the placing of testimony on by the defendant.

MR. KURZ: They can be called up by phone.

MR. DOWNING: Some of them work for other companies.

MR. KURZ: I don't know about that.

THE COURT: That is your risk, Mr. Downing. Court will be in recess.

And thereupon Court was recessed, to be reconvened at nine thirty o'clock a. m., Friday, April 25, 1941.

And at nine thirty o'clock, in the forenoon, Friday, April 25, 1941, Court reconvened, pursuant to adjournment, and the following further proceedings were had:

THE COURT: You may proceed.

MR. KURZ: Your Honor, we found it necessary to clear up one point, and we would like to put Mr. Williford back on for further cross examination.

THE COURT: Proceed.

MR. JAMES R. WILLIFORD, JR., having been previously duly sworn and testified as a witness on behalf of the plaintiff, was recalled to the witness stand and further testified as follows:

FURTHER CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Williford, you stated yesterday that the Tampa Paper Company had a contract with the Poinsettia Dairies for ice cream cups?

A Yes, sir.

Q I believe you stated the contract was for two hundred and fifty thousand cups. Is the name of Poinsettia Dairies printed on those cups?

MR. BRODIE: I object, your Honor.

THE COURT: Overruled.

The question was read.

A On the two hundred and fifty thousand lots—no on neither lot.

MR. KURZ:

Q Are those cups carried in stock?

A Not the two hundred and fifty thousand quality, no.

Q This three million order—?

A The three million is a stock item.

Q The three million is a stock item?

A Yes, sir.

THE COURT: I understood the witness yesterday to say that the three million item was a contract to begin in July, this year. Is that correct?

A Yes, sir.

Q That is something yet to take place?

A That's right.

THE COURT: I do not think that is material.

MR. BRODIE: May I be heard on that, your Honor?

THE COURT: Yes, sir.

MR. BRODIE: The point of that is that the contract is in existence now and it calls for supplying of goods from a source outside of the State of Florida. Now, we do not contend that that question is decisive of interstate commerce, but certainly as to that contract there can be no question about interstate commerce.

THE COURT: I cannot see the materiality of something to take place in the future.

MR. BRODIE: No. The contract is now in existence and the fact of that contract calling for a supply of goods from out of the state indicates the interstate commerce character of that transaction. That is the only point of that.

THE COURT: The transaction has not taken place. That is in futuro.

MR. BRODIE: The contract is already in existence. The deliveries will take place in the future. That is directly in line with the prior order cases. It is an executory contract.

THE COURT: I do not know when the contract was made; whether it was before this suit was filed or since.

MR. BRODIE: I respectfully suggest, your Honor, that is immaterial. The contract is in existence calling for the supply of goods from a point outside of the State of Florida, and that contract has the character of interstate commerce for that reason. Now, as to the prior order cases, there can be no question about interstate commerce. We shall show your Honor, that the prior order doctrine is not decisive of the question of interstate commerce. That when goods are introduced into a state with an intention that they go beyond, to serve a customer, those goods never come to rest. We will show your Honor a whole line of authorities in that regard. But as to this type of transaction, the Court has never questioned that it is in interstate commerce. We shall show the distinction between this type of prior order transaction and a transaction in which goods are ordered in anticipation of the demand of the customer, knowing that the customer is going to call for them. As this witness says, I would not have ordered the goods if I knew the customer did not want them. There is a dis-

inction between that type or order and that type of transaction.

THE COURT: I will let the facts come out, but I will be perfectly frank with counsel, that I think things that take place in the future do not have any place in connection with the question of whether or not at the time of the filing of this suit, the party was interstate commerce, as to that particular transaction.

MR. BRODIE: May I say a little further, your Honor, we do not rest our case upon a transaction—upon one transaction. We are introducing evidence showing the course of business of this branch. We show that in the course of their business, some of the goods come in in response to special orders, and some of the goods come in in response to a recurring course of business. That the whole course of business calls for the flow of goods into the State of Florida, and through the warehouse—.

THE COURT: Yes, I understand what you are talking about. Go ahead, Mr. Kurz.

MR. KURZ:

Q Did you answer the last question? Whether or not those cups were a stock item?

A It is.

Q Regularly carried in stock and sold to other customers?

A Oh, yes.

Q Did you make any specific order to fill the contract you had with Poinsettia?

MR. BRODIE: I object to that.

THE COURT: Overruled. Go ahead.

The question was read.

A No, sir.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. BRODIE:

Q Mr. Williford, how many ice cream cups do you normally keep in stock?

A What size?

Q In the size that is called for in this contract with Poinsettia?

A Well, at this time of the year, usually when the ice cream season opens, our stock will vary from, oh—oh, from fifty to two hundred and fifty thousand.

Q How much room would be taken up by three million ice cream cups?

A I don't know, without figuring it.

THE COURT: Were you to get all these cups at one time or as you needed them?

A They come in at various times.

Q Would you have all these three million of them at one time?

A Oh, no.

MR. BRODIE:

Q Have you ever had three million cups at one time in your warehouse?

A Of this particular size?

Q Yes.

A No, sir.

Q Is there a similar contract now in effect for the supplying of ice cream cups? I withdraw that question. This contract—strike that, please. Mr. Williford, where do the cottage cheese pails come from, about which you testified yesterday?

A Newark, New Jersey.

Q Just a moment ago you stated at this time of the year, you kept in stock between fifty and two hundred and fifty thousand ice cream cups. Do you stock those all winter?

A Yes.

Q You do?

A Yes—not in that large a quantity, but there is a stock there all the time.

Q That is what I mean. You do not stock that large a quantity all winter?

A Well, that is—no, I wouldn't carry two hundred and fifty thousand in the winter time.

Q Why would you carry two hundred and fifty thousand now?

A Well, it's a seasonable item. It sells better now than in the winter time.

Q And do you know from past experience, that your customers are going to want more ice cream cups now than they do in the winter?

A Surely.

Q And that is why you have ordered them? Is that so?

A Surely. This is the ice cream season.

MR. BRODIE: That is all.

RECROSS EXAMINATION

BY MR. KURZ:

Q In other words, you mean by that, Mr. Williford, that your past business experience teaches that you will ordinarily have a sale in your territory of approximately so much merchandise of a given kind during a period of time and you try to keep a stock on hand to supply that demand?

A Yes, it's a seasonable item. We try to anticipate the requirements.

Q Over what period of time are these three million cups to be delivered to Poinsettia Dairy.

A Twelve months.

Q In other words, they are not to be delivered all at one time?

A Oh, no.

Q That is a year's supply?

A Yes, sir.

MR. KURZ: That is all.

THE COURT: Come down.

(Witness excused)

MR. DOWNING: Your Honor, before we started with these witnesses from Tampa, we had on the stand, Mr. Carroll C. Ross, whose examination had not been completed. We would like to call him to the stand.

MR. CARROLL C. ROSS,
having been previously produced and duly sworn, as a witness on behalf of the plaintiff, was recalled to the witness stand and further testified as follows:

FURTHER DIRECT EXAMINATION

BY MR. DOWNING:

Q. Mr. Ross, does the mill pay the freight on carload shipments to the point of destination?

MR. KURZ: I think that is immaterial and irrelevant.

THE COURT: What was the question?

The question was read.

MR. DOWNING: That is, your Honor, to lay the basis for questions as to the manner in which distributors outside of the territory may make deliveries inside of the territory in which the Jacksonville Paper Company is exclusive agent, or has exclusive distributorship.

THE COURT: Well, what mill are you talking about, Mr. Downing?

MR. DOWNING: The mill that supplies the Jacksonville Paper Company.

THE COURT: The Southern Industries?

MR. DOWNING: No, the mills which supply Jacksonville Paper Company with merchandise. Out of state mills.

THE COURT: Let him answer.

A The usual procedure of the mills is to sell carload shipments, f. o. b. mill, with carload freight allowed.

MR. DOWNING: The contract allows the freight to point of destination on carload shipments?

A To the point of merchant's warehouse.

Q The branches down state, say at Tampa and Miami, is freight allowed to that branch, or those branches, on carload shipments?

A Yes, sir.

Q Do I understand that on less than carload shipments no such freight allowance is made?

A On less than carload shipments, the allowance is the carload freight allowance and the merchant has to assume the difference between less carload and carload freight.

Q I believe you stated yesterday that on lines for which you were exclusive distributor in a given territory, wholesalers in another territory are at liberty to sell the same line in your territory?

A Yes.

Q In such cases does the mill allow the other wholesaler the full freight rate into your territory?

A No, the usual practice is to allow freight to the merchant-city. His home city.

Q Assuming then, by way of illustration, that the Whitaker Paper Company, in Atlanta, is your competitor, and has an order for its customer in Tampa on your line. A line on which you hold the exclusive distributorship. Let us say further, by way of illustration, the Champion Line. Do I understand the mill would allow Whitaker Paper Company the carload freight only to Atlanta?

A I don't know what they would actually allow, but the usual arrangement only is to allow the freight to the City of Atlanta, in accordance with the trade customs of the book paper industry.

Q Mr. Ross, on yesterday you identified a sample book of the Kromkoe items manufactured by the Champion Paper Company. Do other paper mills supply you with similar sample books?

A Yes.

Q Will you mention some of them?

A Gilbert Paper Company; American Writing Paper Company; Millers Falls Paper Company.

Q Where is the latter paper company located?

A Millers Falls, Massachusetts.

Q Any others?

A Oh, all of them do, except on items that is news print and cheap bond.

Q Which one of those supplies you with Atlantic Bond?

A Eastern Corporation.

Q Does it supply you with sample books?

A Yes.

Q Those other sample books all indicate the name of the Jacksonville Paper Company as a distributor of the products described therein?

A Yes. Some of them. In some cases, where you wouldn't want lines that don't sell much, they would not be imprinted. They just have the mill name on it.

Q Are those books furnished by the mills to the Jacksonville Paper Company?

A Yes, that's right.

Q What use of them is made by the Jacksonville Paper Company?

A They are given as customers as samples. Given to the customers to give to their customers. Used by salesmen to show samples of that particular grade of paper.

Q Do the salesmen use them in selling to their customers?

A Well, some, yes.

Q On yesterday, in mentioning the concerns for whom the Jacksonville Paper Company acts as the exclusive distributor in certain territories, did you mention the Crossett Paper Company?

A I did not. That is a coarse paper item. I don't know about that.

Q Do these mills, for whom the Jacksonville Paper Company acts as exclusive distributor, have a sales force in this territory?

A You mean, maintain a force in our territory at all times?

Q Yes.

A No. We work through their sales offices located at different points. For instance, in the case of Champion, the sales office that handles this territory is located in Philadelphia.

Q Do they have salesmen in this territory?

A Well, their salesmen from their office, they call on us. They don't have salesmen calling on the printers or anything of that kind, no.

Q Mr. Ross, I want to ask you about private brands, which may be distributed by the Jacksonville Paper Company. Does the company have any brand of its own under which it distributes certain merchandise? Fine paper line?

A Yes, for instance Scribe Bond is a name that we use for a certain grade of paper.

Q Who furnishes you with that item?

A Well, we buy that from different points. We buy it from Eastern; Parker-Young; Champion. They all put that label on it.

Q Do they put that label on paper supplied to other distributors?

A No.

Q In other words, that is—

THE COURT: Mr. Downing, I thought this hearing was on the question of branch offices. Didn't I say I did not want to hear any evidence on that?

MR. DOWNING: I think not. I think the evidence will show the branches distribute all these lines of goods. They act as the home branch does. As the exclusive agent in that territory. They handle these private brands in that territory. Mr. Ross has the knowledge of the particular matters. They are ordered through the Jacksonville Paper Company. All of this is very pertinent or relevant—

THE COURT: Has it not been gone over already?

MR. DOWNING: Not private brands by exclusive agents. We went over it with Mr. McGehee, but he said he did not know all of the details, but Graham and Ross did.

THE COURT: It is necessary to show all the companies they acted as exclusive agents for? Are we only interested in the general course of business?

MR. DOWNING: Yes, but up to this point, we haven't covered his exclusive brands. If possible, I will start on this by asking Mr. Ross to mention briefly, all the private brands they distribute.

THE COURT: Get the general information. I do not think it is necessary to particularize.

MR. DOWNING:

Q Mr. Ross, as the Court suggested, will you mention briefly all the private brands the company uses in distributing merchandise?

A We use the name Hi-Grade, but that is used by other jobbers in other parts of the country. We use that on two or three different items. We use the word Gator on different items. There is also the same name on the coarse paper items that other distributors used besides ourselves, for a number of years. Sunbrite envelopes is a name we use. Southern Maid cards.

Q Cruiser envelopes?

A Cruiser Envelopes.

Q Tarpon Manilla?

A Tarpon Manilla.

Q Mail Cream post cards?

A Mail cream post cards.

Q What about Southern Book Paper?

A Southern Book Paper, there is also another jobber uses that on bond paper. Southern.

Q Are all of those made by out of state manufacturers?

A All except Cruiser envelopes. Envelopes and index cards, which we buy from Southern Industries Company.

Q Is Manilla Bond one of your manufactured brands?

A No, sir, it's a National Mill advertised brand.

Q Mr. Ross, do you receive, in the fine paper division, special orders from all of the branches?

A Just what do you mean by "special orders?"

Q Well, I will ask you to define what is known in the trade as a special order?

A Well, that could mean an odd size, or odd weight on paper that is not carried in stock.

Q I will ask you, generally, if it refers to items that are not carried in stock?

A Generally, yes.

Q Now, will you answer the original question? Do you receive from all of the branches, special orders for goods?

A From time to time, yes.

Q How frequently do you receive such special orders?

A It would be hard to say. They come in from time to time.

Q Do they come in daily?

A Not necessarily, it would be possibly two or three a week, something like that. Average.

Q When you receive such special orders, is it necessary for you to place an order to fill them?

A Yes.

Q From out of state manufacturers?

A It depends on what the item is.

Q How many such items are supplied by Southern Industries? In the fine paper department?

A Well, that would be something manufactured speci-

ally and it would be hard to say the number of them. As a rule, on them, the items are reproduced from Southern Industries and a few other special items that can be obtained in the State, that would come from out of the State.

Q Do you receive special orders for mill printed envelopes?

A Yes.

Q From all of the company branches?

A Yes.

Q What about mill lithograph envelopes?

A No, not from all of the branches.

Q Which ones do you recall receiving such special orders from?

A Well, the Tampa Branch, I think we have had one.

Q Was that for delivery in Lakeland?

A That's right.

Q Do you know who the customer was?

A Commercial Press. Commercial Printing Company, I believe the official name is.

Q Was there an order for the Lakeland Hotel?

A Well, Lakeland Hotel was his customer. We didn't know him as a customer from our Branch order.

Q Do you ever receive special orders from a ledger sheet of a particular size or form?

A Completed ledger sheets, no.

Q What do you mean by "completed ledger sheets?"

A Printed. Printed, ready for use by the—.

Q What type of ledger sheets do you receive special orders for?

A For just the paper and the ruling.

Q In number, Mr. Ross—?

A Probably one per cent.

Q Are you speaking now of volume or the number of such orders?

A The number of such orders. It would also be applied to volume, too.

Q Have you ever placed special orders with the Baltimore Sales Book Company?

A No, sir.

Q Are they for coarse paper items?

A Yes, sir.

Q Will you state the type of business done by your customers, generally?

MR. KURZ: Your Honor, I think that is irrelevant.

THE COURT: Yes, I sustain the objection.

MR. DOWNING:

Q Mr. Ross, from what source have you received newsprint in the last year or two?

A We bought some from Finland, and some from Canada.

Q From the St. Maurice Valley Company in Canada?

A Yes.

Q Have you bought from any other source?

A No, they are the only two. Do you mean newspaper or the paper—?

Q Well, such paper as the Macon Branch might supply to the West Point Publishing Company?

A St. Maurice Valley, only.

Q Mr. Ross, at the present time, how are orders received from Nassau?

A From Nassau?

Q Yes.

A They are mailed in—.

MR. KURZ: Your Honor, we have gone into that. This testimony is most cumulative. We are having the same experience here as in taking twelve hundred pages of depositions for months and months. I think the record is just being built up without serving any good purpose, and I want to object to that.

MR. DOWNING: There is no evidence as to how orders are presently received from Nassau.

THE COURT: My recollection is that the business out of Nassau is handled by the Jacksonville Branch.

MR. DOWNING: The shipments are made by the Jacksonville Branch. I want to establish how the orders are received. I think that is a very pertinent inquiry.

THE COURT: Answer the question.

A The fine paper division has only had two orders and both of those came in direct from the customer.

MR. DOWNING:

Q By mail?

A By mail.

Q By "direct", do you mean the orders were mailed to Jacksonville from Nassau?

A That's right.

Q What is the name of the salesman there? Do you know?

A I don't know the names of the salesman. We have no fine paper salesman there.

Q Do you know what use, generally, is made of the book papers which your company deals in?

A You mean as to what they print?

A What they are used for? Are they used by printers?

A That's right.

Q Now, are they generally used for making up magazines and resort booklets?

A They are generally used for making up magazines and resort booklets, and any other type of book. Can be used for labels. There is a thousand and one things book paper can be used for, because there is so many different grades of book paper.

Q Are the coated papers used for citrus boxes and labels?

A Some small portion of the total tonnage would be used for that purpose.

Q And also the type of paper used for printing citrus labels?

A Yes, some grades of it are.

Q Are most of your customers in the fine paper department printers?

A Yes, sir.

MR. KURZ: Your Honor, that is the same question that has been ruled on once before by the Court.

THE COURT: Not exactly. He wanted to name all the customers he had. I thought that was too broad. He has confined it to printers now.

MR. DOWNING: Do you have any customers, who are, themselves, wholesalers?

A Printing papers? No.

Q Do you have any customers who are industrial customers? For example, the Peninsular Telephone Company, Tampa?

A I don't know. That is handled in the Tampa Branch. I don't know if they have the printing equipment or not.

Q I believe you said you sold news print to a number of newspapers?

A That is right.

Q Do you have, if you recall, newspaper customers at each of your branches?

A I might, name one or two. I wouldn't know all of them.

Q Which do you recall, Mr. Ross?

A Well, Jacksonville, Clay County Crescent. You don't want all of them, do you?

Q Let us confine your testimony to any you know at Tampa, St. Petersburg, Orlando and Miami. In that vicinity. Newspaper customers of those branches. Do you recall any?

A Well, at Orlando, we sell the Apopka Chief, at Apopka. Tampa, they sell the newspaper at Brooksville. I don't know what they get.

Q Do you sell the Sebring American, at Sebring?

A I don't know. Those accounts are handled in that territory and shipped out of the warehouse and I don't come in contact with them.

Q Do you sell the Record Press, at St. Petersburg?

A Out of Tampa?

Q Yes.

A No.

Q Do you sell it out of St. Petersburg?

A No.

Q Mr. Ross, over a period of time, do your customers remain more or less the same?

A Yes.

Q Do their requirements generally remain the same?

A Not necessarily. Installation of new equipment would change the demands of a plant. The paper.

Q I am not speaking of the requirements of an individual customer, Mr. Ross. My question is relative to the requirements of your trade, generally?

A It varies with additions and improvements in sheets. New developments, now, sheets, and things of that kind. The change in advertising, requiring different types of paper to bring out color and things of that kind.

Q Is there such a disparity in seasonal items?

A Yes, sir.

Q Other than the points you have mentioned, do the requirements of your trade remain more or less constant?

A Yes.

Q Are you able, by reason of your experience, to anticipate the demands of the trade?

THE COURT: That has been gone into.

MR. DOWNING: It has been gone into, your Honor, but—

THE COURT: It has been gone into. I don not want to hear any more.

MR. DOWNING:

Q Do I understand from your testimony, Mr. Ross, that the orders you placed with out of state mills are

to fill the orders on hand and in anticipation of the demands of the trade?

A Yes.

MR. DOWNING: That is all.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Ross, when you spoke of acting as Agent for various manufacturers, will you tell us please, whether the Jacksonville Paper Company buys their merchandise or handles it on commission?

A Buys the merchandise. Pay for it ourselves and then resell it.

Q Resell it to your customers?

A That's right.

Q You talked about freight allowances being made to the point in which the distributor is located. Isn't it a fact that a freight allowance also is made to a distributor in a territory, to points in another territory where he may have placed orders?

A Just how is that?

Q Well, for instance, if a distributor in Atlanta, handling the same brands that you mentioned, sold a shipment somewhere in your territory. Would not the mill make the freight allowance to him, to point of destination?

A Not in all cases. They might in some case. For instance, if there was a distributor in Atlanta that was to sell a car of paper to, say a customer in Macon, it

would probably—while it was overlapping territory, they would allow for the freight.

Q The E. C. Palmer Company in New Orleans; do you know whether it is a fact that they sold an order in Miami to Franklin Press?

A Yes.

Q Is it not a fact that that freight was allowed on that?

A I do not know whether it was or not.

Q Jacksonville Paper Company has the same type of paper available in Miami, does it not?

A Yes.

Q For that order?

A Yes.

Q You stated, I believe, that the mills do not have any salesmen in the territory to call on purchasers of that type of paper, other than the distributors; isn't it a fact that Champion Paper Company has a salesman in this territory that calls, for instance, on the Record Press, in ST. AUGUSTINE?

A On special occasions, yes, but as a general thing, no.

Q Did the Necoosa-Edwards have a salesman in this territory that called on the trade?

A For one line of merchandise.

Q Did the Jacksonville Paper Company have exclusive sales on that line?

A In this territory.

Q Still the mill had salesmen to call on customers?

A Yes.

Q You talked about special orders being made. As I understand it, the branches placed the order with the Jacksonville Office? Is that correct?

A That is correct.

Q And then, if Jacksonville, or some other branch does not have it in stock, where you could get that particular supply of merchandise, you order it from the mill?

A That's right.

Q Does the amount of the special orders vary with the different branches?

A Yes, it would vary. It would be a larger amount from the larger branches and a smaller amount from the smaller branches.

Q You stated about the various uses of book paper. Do you know whether any book paper sold by any particular branch of the Jacksonville Paper Company, is used for any particular purpose, of the type that you mentioned?

A Well, we have sold—Jacksonville Branch sold the Record Company at St. Augustine. Carloads of paper, to be used in printing hotel booklets.

Q Do you know what the branches sold it for?

A Well, the Tampa Branch has sold the Tribune Press some paper to be used in printing some of the printing for the Legislature. State Legislature proceedings, or laws, or something.

Q But you do not know the particular type of booklet that it was used for?

A No. I rarely ever know what the job is. We sell to the printer and lots of times our branch doesn't know what he is going to do with it.

Q You said that Orlando sells to the Apopka Chief Newspaper?

A Yes.

Q What type of paper is that? Do you know?

A Well, I think,—I know they sell them only newsprint.

Q Is the Apopka Chief a daily or weekly paper?

A I believe it's weekly. I am not certain.

Q Is it a large paper?

A Not very, no. Wouldn't compare with a Jacksonville Daily.

Q What about the paper in Brooksville. Is that the same type of paper as the Apopka Chief?

A No; it's the same type of paper, but in sheets instead of rolls.

Q I was referring to the customers, rather than the newsprint. A paper that is published by—

A The paper would be the same type.

Q A weekly paper?

A A weekly paper, I think it is. I am not sure. I am pretty sure it is a weekly paper, though.

Q That is all,—does the Eastern Manufacturing Company have a salesman calling on the trade in this territory?

A At times, yes. That is, they don't have a regular man that makes periodic trips, as the Nekoosa mans does.

Q They do have a representative down here?

A Yes, they do have a representative down here. Once or twice a year.

Q They call on the trade and sell the lines that you, yourself, handle?

A Yes, sir.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. DOWNING:

Q Mr. Ross, do you act as exclusive distributor for any of the lines made by A. C. Palmer Company?

A No, sir.

Q Does the Champion Paper Company sell direct to the Record Press in St. Augustine?

A Not to my knowledge.

Q Are the orders which your salesmen take from the Record Press delivered to Jacksonville Paper Company?

A What is that?

Q Are the orders which the salesmen of the Champion Company take from the Record Press at St. Augus-

time delivered through the Jacksonville Paper Company?

A Yes.

Q Do you make the deliveries? Do you bill the Record Press yourself for the goods?

A Yes.

Q Is that true in the case of salesmen from Nekoosa-Edwards?

A That would be true if he sent us an order.

Q Who got the order?

A The salesman for the mimeograph paper.

Q You mean your salesman or—?

A No, Nekoosa salesman.

Q And delivery was made through the Jacksonville Paper Company?

A Yes.

Q Was that true, also, in the case of the Eastern Manufacturing Company?

A Yes.

THE COURT: We are back on Jacksonville Paper Company again?

MR. DOWNING: Your Honor, this refers to a course of business, confined not only to the Jacksonville Paper Company, but the territory in the state. Where these other branches are located.

THE COURT: You have not gone into that, that I heard anything about.

MR. DOWNING: Do any of these special salesmen that you named, go into the territory covered by Tampa, Miami, Orlando and St. Petersburg?

A Yes.

Q On cross examination, you stated that on special orders, you got a small number from the smaller branches and a larger number from the larger branches, I believe. Is, generally, the proportion about the same as the proportion of the business they do?

A As a rule, yes.

MR. DOWNING: That is all.

MR. KURZ: That is all.

(Witness excused)

MR. DOWNING: Call Mr. H. D. Graham.

THE BAILIFF: He is not here.

MR. DOWNING: While we are waiting for him, your Honor, we would like to recall Mr. Reinohl for a minute.

MR. A. S. REINOHLE, having been previously duly sworn as a witness on behalf of the plaintiff, was recalled to the witness stand and further testified as follows:

FURTHER DIRECT EXAMINATION

BY MR. DOWNING:

Q Mr. Reinohl, you identified the other day, a num-

ber of ledger sheets which were marked for identification Plaintiff's Exhibit No. 2, at Miami. I believe you stated that these are the ledger sheets on current accounts at Nassau?

A Yes, sir.

Q Will you please state the approximate number of such accounts?

A I would say approximately seventy-five.

MR. DOWNING: Your Honor, we offer these in evidence, as Plaintiff's Exhibit, Miami No. 1.

MR. KURZ: We object to the introduction of the ledger sheets in evidence, as they are part of the original records of the company and the ledger sheets themselves, have no evidentiary value in this case. The witness has already testified to the number of accounts there.

THE COURT: We had arranged yesterday, it seemed to me, rather satisfactory to let the witness testify to substantially what they show. I do not think we ought to utilize the sheets of a current records, unless it is essential.

MR. DOWNING: I withdraw the offer.

THE COURT: I think the same purpose could be accomplished under the understanding that we had yesterday. To permit the substantial matters to be testified to.

THE COURT: The items referred to, Mr. Witness, concerning the Nassau business, do those represent orders from Nassau?

A Yes, sir.

Q To what office?

A A portion of those orders were shipped from Miami-warehouse and a portion from the Jacksonville warehouse.

MR. DOWNING: If we may interrupt, we offered yesterday, the testimony, as to the number of shipments.

THE COURT: I thought there was something on it.

MR. DOWNING: There were over three hundred and fifty, by admission of Mr. Reinohl.

MR. DOWNING: I should like to ask Mr. Reinohl one other question.

THE COURT: Go ahead.

MR. DOWNING:

Q Will you state, Mr. Reinohl, the approximate number of current accounts payable with out of state manufacturers who supply you and your branches with merchandise?

A At the very best I could just make a guess at that.

Q I will state that in the—I think one of the motions filed in this case stated that there were about five hundred such accounts payable. Will you state whether that is approximately correct?

A I think that is approximately right.

MR. DOWNING: That is all.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Reinohl, with regard to the Nassau shipments

made from Miami, do you have a tabulation of the amount of those in dollars and cents?

A Yes, sir.

Q (Tendering witness paper) What period does that cover?

A I have one tabulation that covers from January 1, 1939, through December 31, and another from January 31, 1940, through December—January 1, 1940, through December 31, 1940.

Q Will you state the total amount in dollars and cents by year, of those Nassau orders?

A During 1939, \$12,239.87 1940, \$13,422.26.

Q Did you make a calculation to show what percentage of the total volume of Miami that represents during that year?

A Yes, sir.

MR. DOWNING: Objected to on the ground the percentage is immaterial and irrelevant. The evidence shows that the volume is substantial and the Supreme Court has said in a number of cases that mere percentage is not material in deciding whether there is or is not interstate commerce. The evidence also shows the frequency of shipments.

THE COURT: Overruled.

MR. KURZ: What percentage was that, Mr. Reinohl?

A It was from two to three per cent. I believe you have those figures, Mr. Kurz.

Q (Tendering witness paper) Was that calculation made in answer to interrogatories propounded?

A Yes, sir.

Q What percentage does that show?

A You have reference to the percentage of the Miami volume only?

Q I have reference to the percentage of the Miami volume only.

A 1939, it was 2.8%. 1940 2.4%

MR. KURZ: No further questions.

MR. DOWNING: That is all, your Honor.

(Witness excused)

MR. DOWNING: I ask the Clerk to produce the depositions taken at Savannah.

And thereupon said depositions were produced by the Clerk and opened.

MR. DOWNING: We offer in evidence, from the depositions taken in Savannah, on January 16, 1941, the following portions of the depositions of J. L. Hendry; certain portions of depositions of James A. Bags, Jr.; certain portions of the deposition of Frank McCauly, and certain portions of deposition of Margaret Oetjen, for the purpose of showing continuing violations at that branch, after April 29, 1940.

THE COURT: All right.

MR. DOWNING: We are making that offer, your Honor, in view of counsel's offer of yesterday to show complete subsequent compliance.

THE COURT: You merely offer that as a proffer?

MR. DOWNING: Yes.

THE COURT: Pursuant to the Court's ruling, let it be filed, but not received.

MR. DOWNING: In order that the record may be clear, I said I was referring to certain portions of the depositions. To clear that up, I will offer all of the depositions of the witnesses mentioned.

THE COURT: Very well.

The depositions last above mentioned were received and file marked by the Clerk, dated April 25, 1941.

MR. H. D. GRAHAM,
was produced as a witness on behalf of the Plaintiff,
being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DOWNING:

Q Please state your name.

A H. D. Graham.

Q Are you employed by Jacksonville Paper Company?

A I am.

Q Where?

A Jacksonville, Florida.

Q In the main office?

A Yes.

Q In what capacity?

A Purchasing agent.

Q In what division or department?

A Sales department.

Q Are you in charge of the sales department of the coarse paper division?

A Yes.

Q And do you do all the purchasing of merchandise for the Jacksonville Paper Company?

A Coarse paper division.

Q I mean in that department?

A Yes.

Q You order for all of its branches?

A Yes.

Q Will you briefly describe or mention, Mr. Graham, the chief lines of goods distributed through the coarse paper division.

A Paper bags; wrapping paper; toilet tissue.

Q Are they the main ones?

A Yes.

Q Are they also the fastest moving lines that you handle?

A Yes.

Q Is there a constant turn-over in those lines?

A Yes.

Q Is it necessary for you to place frequent orders for other stocks of goods in those lines?

A It is.

Q With whom do you place such orders?

A Various mills.

Q In the State of Florida, or out of the State of Florida?

A Mostly out of the State.

Q Do you get a portion from any mills in the State?

A Southern Industries Company.

Q For which items?

A Paper bags.

Q Do you get all of your bags from Southern Industries Company?

A All of certain types.

Q What about—about what proportion of your bag stock is supplied by Southern Industries?

A I don't know.

Q Well, would you state whether it is as much or more than half?

A It's more than half.

Q Does the Macon Paper Company at Macon dis-

tribute a portion of the bags, or the bag stock made by Southern Industries Company?

A Yes.

Q Does the Macon Paper Company branch generally distribute about the same proportion of Southern Industries lines as do the other branches?

A Approximately.

Q Will you mention briefly, Mr. Graham, the principal out of state suppliers of the coarse paper line?

MR. KURZ: Your Honor, there is in evidence, a statement of Mr. Reinohl, that there are about five hundred accounts of suppliers.

THE COURT: I do not think it is necessary to go into those details, Mr. Downing.

MR. DOWNING: Your Honor, we were interested in showing a wide range of sources from which they received their principal lines of merchandise.

THE COURT: Haven't you shown it?

MR. DOWNING: We have shown it on the fine paper list, by Mr. Ross. I do not think we have shown that on the coarse paper lines supervised by Mr. Graham.

THE COURT: Show it generally. Not who they are, or where they are located. Let it be generally.

MR. DOWNING:

Q Do you receive coarse paper lines from manufacturers in most of the States east of the Mississippi, Mr. Graham?

A Yes, sir.

Q Do you receive some lines from manufacturers in states west of the Mississippi?

A Very few, if any.

Q Do you receive goods from Crosset Paper Mills?

A Yes, sir.

THE COURT: I do not want to go into detail, who they get them from.

MR. DOWNING:

Q Do you get goods from out of state manufacturers in Arkansas and Louisiana?

A Yes, sir.

Q Kansas?

A No.

Q Does the Jacksonville Paper Company, in its coarse paper lines, distribute a number of items under private brand names?

A A few.

Q Will you state briefly what they are?

A Fort Hawkins Toilet Tissue. Dry Well Paper Towels. Seafoam Toilet Tissue.

Q Did you name a "Southern", private brand name?

A Yes, we use it on kraft wrapping paper.

Q Now, Mr. Graham, are those lines which you mentioned manufactured by out of state mills?

A Yes, sir.

Q Do the out of state mills use other brand names for other distributors?

A I don't know.

Q Do they use them for other distributors in Florida?

A No.

Q Does the Jacksonville Paper Company, in Jacksonville and in its branches, act as exclusive agents for any out of state manufacturers? Or does it hold an exclusive distributorship for certain manufacturers or for certain lines made by out of state manufacturers?

THE COURT: You mean in the coarse paper division.

MR. DOWNING: Yes.

A A few.

MR. DOWNING:

MR. DOWNING: Q Will you mention those, please, sir?

A Hudson Pulp & Paper Corporation. Irving Paper Mills; Central Paper Company.

Q Will you mention ththose, please, sir?

A Hudson Pulp & Paper Corporation. Irving Paper Mills; Central Paper Company.

Q Are you the exclusive distributors for all of their lines in the coarse paper division?

A Exclusive distributors for all of their lines in the coarse paper division, as far as I know.

Q Do the various branches distribute those lines?

A Yes.

Q Do you act as exclusive distributor for any lines manufactured by the Oneida Paper Company?

A By whom?

Q By the Oneida Paper Company?

A Yes.

Q Is that an out of state manufacturer?

A Yes.

Q What lines do you distribute for that concern?

A Cellophane bags and window bags.

Q And you are the exclusive distributors in this territory for those lines?

A As far as I know, yes.

Q Do you act as the exclusive distributor in this territory for any items made by Carolina Wash Board Company, Charlotte, North Carolina?

A Yes, sir.

A What is the item?

A Wash boards.

Q Is that the only thing they make?

A As far as I know.

Q Mr. Graham, in the coarse paper division, do you frequently receive special orders from branches?

A Yes.

Q Will you state to the Court what a special order is known as in your business?

A An order for any item or items not regularly carried in stock.

Q I hand you, Mr. Graham, what has been marked as Plaintiff's exhibit, Jacksonville Paper Company 16, and ask you what that is.

A Its a coarse paper price book.

A Is that the current price book?

A Yes.

Q Does it contain a description of the various items currently carried in stock?

A Yes, sir.

Q Will you state for the Court's information, approximately how many items are listed in that book?

A I do not know.

Q In addition to the lines listed in the coarse paper price book, do I understand that you frequently receive orders for other goods which are not listed?

A Occasionally.

Q Do you get such orders from all of the branches?

A Yes.

Q How frequently are such orders, special orders, received?

A Oh, its pretty hard to answer that question very definitely.

Q To refresh your memory, are there not thousands of those special order items?

A Well, there are quite a few of them. I wouldn't say thousands.

THE COURT: Special orders not listed in the price book, Mr. Downing?

MR. DOWNING: Yes. Items which are not carried in stock.

MR. DOWNING:

Q Do you receive such special orders as a regular occurrence?

A Yes.

Q In number, about how do they compare with your total number of orders of coarse paper?

A A very small percentage.

Q I am not asking you now, Mr. Graham, as to the volume of business, but as to the number of orders received in comparison with the total number received for coarse paper items.

A A very small per centage.

Q Are those orders generally for a smaller amount of goods than for goods that are carried in stock?

A They vary.

Q Have you ever received special orders for goods to be manufactured by the Baltimore Sales Book Company?

A Yes.

Q How often do you get in an order of that sort, Mr. Graham?

A Oh, frequently.

Q Is it a daily occurrence?

A No, I wouldn't say daily. Weekly.

Q Do you get them from all branches?

A Yes.

Q Do you sometimes get several of such orders in one day?

A Yes.

Q Would you state for the information of the Court, what type of goods those special orders of the Baltimore Sales Book Company call for?

A Usually printed books.

Q Printed sales books?

A Yes.

Q Are they printed with the name of the customer?

A Yes.

Q The customer of the branch.

A Yes.

Q Where is that printing done?

A In Baltimore, as far as I know.

Q It is done by the Baltimore Sales Book Company?

A Yes.

THE COURT: What—now wasn't that covered by the fine paper man?

MR. DOWNING: No, sir, I asked him about the Baltimore Sales Book Company and he said he did not deal with them.

MR. KURZ: It has been shown the books are printed and they are printed out of the state. The number of orders has been shown by Mr. Reinohl.

MR. DOWNING:

Q Do you order anything from the Baltimore Sales Book Company other than special printed sales books?

A What we call stock sales books.

Q Are they unprinted?

A Except for the form.

Q What proportion of your orders to that company are for stock book, and what for special printed books?

A I don't know.

Q I hand you, Mr. Graham, eleven loose leaf ledger sheets representing the account with the Baltimore Sales Book Company of Baltimore, and I ask you if the items

listed in the credit column represent orders placed by you for goods from that company.

MR. KURZ: That has been fairly covered.

THE COURT: That has been testified to, Mr. Downing, by Mr. Reinohl, that it did, with the exception that there might be some adjustment items on there. That has not been disputed.

MR. DOWNING:

Q You have been asked particularly about special orders which the Baltimore Sales Book Company produced, Mr. Graham. Do you also place special orders for other lines of goods to be printed up by an out of state manufacturer?

A Yes.

Q What are such lines?

A Bags. Bags of various types.

Q Any laundry bags?

A Yes.

Q Any others?

A Glassine bags. Celophane bags.

Q Are they generally printed with the name of a concern? Of a customer?

A In some instances, yes.

Q What out of state mills supply you with those items?

A Oneida Products, and Equitable Bag Company.

Q Does Schersch & Company of New York, supply you with any?

A Yes.

Q What type of bag?

A Special types.

Q Glassine bags or otherwise?

A No.

Q Do they furnish you with any printed laundry bags?

A No.

Q What about the Duplex Coffee Bag Company of Brooklyn?

A We get some bags from them.

Q Do you recall a special order from Minute Fresh Coffee Company of West Palm Beach?

A Yes.

Q What items did that order cover?

A State the question again, please.

Q What items did that order cover?

A Coffee bags.

Q Were they to be printed with the name of the company?

A Yes.

Q With whom did you place the order?

A Schorsch.

Q Is not the Minute Fresh Coffee Company a regular customer for that line?

A Yes.

Q Do you recall receiving special orders from Tampa and Miami for hotel laundry bags?

A No, I do not.

Q Do you ever receive special orders for ice cream cups or cottage cheese pails, Mr. Graham?

A Occasionally.

Q Are they frequently ordered to be printed with the name of the customer?

A Sometimes they are, and sometimes they are plain.

Q Is that an item generally which is carried in stock?

A Plain cups are generally carried in stock. Not printed.

Q Do you recall whether you have received such orders from all of the branches?

A No, I don't.

Q Have you had orders from the Tampa branch for such items?

MR. KURZ: Your Honor, I think that Tampa has been fully covered by Mr. Williford. I think counsel is intentionally running up the record in this case.

MR. DOWNING: There is no such intention at all. We are interested in making a full record—.

THE COURT: Hasn't that been fully covered and testified to? That there were two hundred and fifty thousand carried in stock? Didn't we spend about thirty minutes on that?

MR. DOWNING: That was for a particular customer at Tampa.

THE COURT: They had several customers, the witness testified about, in Tampa. The proof is clear on that, Mr. Downing, without further repetition. Now, if you want to show other places. Tampa is the only place that has been gone into. If you want to show about the other branches, all right. But, Tampa has been gone into on the ice cream cups.

MR. DOWNING:

Q Do the branches in which you have a coarse paper department, Mr. Graham, do generally the same type of business?

A Practically.

Q Mr. Graham, will you state generally about how much volume you have to have on certain items before they are placed in the price book?

A That isn't the governing factor.

Q What determines whether you will carry an item in stock or still continue to order it only in response to special orders?

A Well, that depends on the character of the item.

Q Does it depend on turn-over, also?

A Yes.

THE COURT: The Court will take a fifteen minute recess.

And thereupon an informal recess was had, thereafter the following further proceedings had.

MR. DOWNING:

Q Mr. Graham, does the company have to be assured of a good turn-over of a certain line before it begins carrying it in stock?

A Yes.

Q Do you always await receipt of an order from a branch before placing an order for it?

A Yes.

Q Mr. Graham, generally, do your customers remain about the same over a period of time?

A Practically.

Q In general, do their requirements remain more or less constant? The requirements of the trade?

A I would say so.

Q By reason of your experience, can you anticipate the demands of the trade and place your orders accordingly?

A On stock items, yes, sir.

Q You say you can, through your experience, anticipate about how much of the stock items are needed for a period of time?

A Yes.

Q Are certain stock lines seasonal in nature?

A Some.

Q By reason of your experience, can you anticipate the seasonal demands in those lines and order accordingly?

A To a certain extent.

Q Does it ever happen that sometimes orders will be received for some items on which the stock has been exhausted?

A Yes.

Q In that case is it necessary to place orders with the out of state mills to fill the particular order?

A The usual procedure is to wait until some stock comes in.

Q That is, assuming that an order has already been placed for that particular line.

A Yes.

Q Otherwise is it necessary for you to place an order to fill the particular order on hand?

A In some instances.

Q Are such orders retained and filled from the new stock as it arrives?

A Yes.

Q In such cases is delivery made immediately, or shortly?

A Within a reasonable length of time after the merchandise has been received. Depending on how long it takes to get it to the warehouse.

MR. DOWNING: That is all.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Graham, are you directly familiar with the shipping department?

A Some angles of it.

Q When an order is received for a stock item which happens to be out, is the order to the mill, for the particular quantity of the order on hand, or is it for a supply to meet your usual business requirements?

A Its a supply to meet our usual business requirements.

Q And when those goods are received, what is done with them?

A They are put in the warehouse. Put in stock.

Q And then the orders on hand and future orders are filled from that stock, is that correct?

A That is correct, sir.

Q As to those items for which you have the exclusive territory, are those purchased outright by the company, or handled on commission, or any other basis?

A Purchased outright.

Q Do the suppliers of those brands, or those par-

ticular lines of merchandise, have salesmen who come into this territory and contact the trade?

A Not as a usual thing, no.

Q It does happen, though, doesn't it?

A Oh, yes.

Q That they call on special customers?

A Yes, that frequently happens.

Q Doesn't the Nekoosa-Edwards Company have a man call in the territory to contact the trade?

A Yes.

Q As to these special orders of items that are not carried in stock, will you tell us, please, whether or not those are items that had to be manufactured by the mills, or are they the usual stock items for the mills?

A Generally, they are stock items with the mills.

Q How do those special orders compare in amount with the usual orders that you receive for items that you carry in stock?

A Very very small.

Q Is it or not a fact that in very many instances those special orders are made for a regular customer more or less as an accommodation to them?

A In a great many cases, yes.

Q You have testified that certain types of bags and other merchandise have the name of the customer printed on them. Is that very often done by the Southern Industries Company at Jacksonville?

A Yes.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. DOWNING:

Q Mr. Graham, you mentioned the fact that some of the out of state mills occasionally send down a salesman to call on the trade. Are the orders they take referred to Jacksonville Paper Company?

A Yes.

Q Or its branches?

A Yes.

Q Are the goods shipped to you and delivered by the Jacksonville Paper Company?

A Yes.

Q Or its branches?

A Yes.

Q Does the Jacksonville Paper Company or its branches bill the customer in those cases?

A Yes.

Q Does the Macon branch ever place special orders for bags to be printed by the Southern Industries?

A Yes.

Q Does the Baltimore Sales Book Company, on these special orders, special orders for customers, ever make direct shipments to the customer?

A In some cases.

Q Is that a regular occurrence?

A Yes.

Q Do they make direct shipments to the customers of branches?

A In some cases.

Q Does the Bibb Manufacturing Company make shipments to customers direct? Of branches?

A Yes.

Q The Bibb Manufacturing Company is located in Macon, is it not?

A That is correct.

Q Macon, Georgia.

A Yes.

MR. DOWNING: That is all.

(Witness excused)

MR. DOWNING: We call for the production of depositions taken at Tallahassee, Pensacola, and Mobile:

The said depositions last above referred to were produced and opened by the Clerk.

MR. DOWNING: Your Honor, on referring to the record, we find that counsel for the defendant offered to prove continuous compliance at these other branches on which coverage is conceded. We therefore offer, for the purpose of showing continuous violations in the

branches at Mobile, Pensacola and Tallahassee, the depositions taken there.

THE COURT: All right. Let the record show that the offer was made, and the depositions may be filed as a part of the record, but not received in evidence in this trial.

The depositions last above referred to were received and filemarked by the Clerk, April 25, 1941.

MR. DOWNING: We have also subpoenaed witnesses to prove violations at Florida Paper Company, at Jacksonville, and in the main office and warehouse at Jacksonville since April 29th, 1940.

We offer to prove continued violations since that date.

THE COURT: All right, the same ruling; let the record show that the proffer was made.

JESSE BOSTON BROWN,
produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRODIE:

Q Will you please state your full name Mr. Brown?

A Jesse Boston Brown.

Q And where do you live?

A I live in Tampa.

Q By whom are you employed?

A Tampa Paper Company.

Q How long have you worked for Tampa Paper Company?

A Well, I was transferred there from Lakeland on October 7, 1940.

Q And before you transferred, where did you work?

A Lakeland Paper Company in Lakeland.

Q How long had you worked there?

A I went to work for them in November, 1939.

THE COURT: Will you speak a little louder, Mr. Brown, please.

MR. BRODIE:

Q Are both the Tampa Paper Company and the Lakeland Paper Company branches of the Jacksonville Paper Company?

A Yes, sir.

MR. BRODIE: If your Honor please, I am prepared to prove by this witness that the minimum wage and the overtime sections of the Act have been continuously violated. I understand that it is conceded on those branches, but I do not want to leave myself out on that. Do you admit violations, Mr. Kurz?

MR. KURZ: The statement has been made in the record that there have been violations, if the branches are covered.

THE COURT: I understand they are covered by the stipulation, Mr. Brodie.

MR. BRODIE: Thank you.

MR. BRODIE:

Q At Lakeland, Mr. Brown, what was your job?

A Truck driver.

Q And what has been your job at Tampa?

A Shipping clerk.

Q In what department.

A Course paper.

Q Mr. Brown, will you please describe for the Court, the warehouse in which you work at Tampa.

A Well, its situated—

MR. KURZ: Objected to on the ground it is immaterial and irrelevant. I think the structure of the building has nothing to do with it.

MR. BRODIE: If your Honor please, there has been some suggestion in this case that counsel is relying on the theory that these goods, when they come into the warehouse, come to rest. This testimony is directed to showing the nature of the warehouse, how the goods go through it, and that the goods actually do not come to rest. The warehouse is not a place of storage; that the goods do not come in here in dead storage and stop. They are brought in and unloaded and go through, and the primary purpose of the warehouse—

THE COURT: You can show that, but you asked him to describe the warehouse. You mean the operation of the warehouse.

MR. BRODIE: I respectfully submit, your Honor, I can ask only one question at a time. I am just leading, by that question, into a line of questioning which will

develop how the goods travel through the warehouse. I cannot ask more than—.

THE COURT: I am not interested whether it is brick or stone or frame—.

MR. BRODIE: My question was directed to the general description of the type of building, and the type of platform and things of that sort.

THE COURT: All right, go ahead.

MR. BRODIE:

Q Will you describe, generally, the warehouse with reference to its location. With reference to railroad siding, if any. With reference to platform for the unloading and loading of goods, and with reference to the amount of space there is for warehousing, and just how the building is divided up.

A The warehouse is at 338 South Franklin Street, Tampa. It has a platform for loading and unloading merchandise coming in by truck or hauled by our trucks. It has two railroad sidings, one for the A. C. L.—Coast Line, and one for the Seaboard. The warehouse is divided into a coarse paper and a fine paper section, which it is supposed to be, I think, definitely divided. The amount of space in the warehouse.

Q And you are familiar, are you, only with the coarse paper department?

A That's right.

Q Do you know Mr. Brown, generally, the type of merchandise that is handled in the coarse paper department?

THE COURT: Hasn't that been covered?

MR. BRODIE: I am not sure that it has been covered for this branch. If your Honor is satisfied on that point, I am.

THE COURT: I think that has been covered.

MR. BRODIE:

Q Mr. Brown, do you know, generally, the sources of that merchandise? That is, with respect to whether it comes from points within the State of Florida, or from points outside the State of Florida?

A You mean you want me to name the items?

Q No, I mean, generally; whether it comes from points—whether the source—whether the coarse paper items in general come from points inside Florida, or from points outside Florida.

A We receive from Jacksonville, and we receive shipments from out of the state.

Q How frequently are shipments received from out of the state?

A We receive shipments each week from out of the state.

Q Since you have been at the Tampa Paper Company warehouse, has a week ever passed during which you have not received shipments from outside the state?

A If there has, I can't remember it.

Q Will you describe to the Court, Mr. Brown, the method by which those shipments are brought into the state from outside of the state? Types of carriers in which they come in?

MR. KURZ: I object to that question. The witness

evidently doesn't know how they come into the state. He may say how they are received in Tampa.

THE COURT: He can answer if he knows.

MR. BRODIE:

Q Do you you know?

A Well, I know we receive merchandise from the Clyde-Mallory Steamship Company. We receive merchandise from the Pan-Atlantic Steamship Company. We receive merchandise from the Bull Line Steamship Company, and receive merchandise from the Coast Line Railroad Company. We receive merchandise from the Seaboard Railway Company. We receive merchandise from the Central Truck Lines, and we receive merchandise from Great Southern Truck Line.

Q Do all those carriers, Mr. Brown, bring in merchandise to the Tampa Paper Company from points outside of Florida?

A Well, Great Southern Trucking Company and Central Trucking Company bring it from both—sometimes its in Florida, and sometimes out of Florida.

Q How about the steamship and the railroad lines?

A Well, occasionally we had—well, I would rather not answer that question, because I don't know it.

Q Why don't you know? You don't know where the goods come from?

A I don't know whether we ever received any goods by railroad or steamship from any other place except out of the state.

Q So that if I understand you correctly, so far as you know—that is, if I understand your answer cor-

rectly, so far as you know, all of the shipments that come in by railroad and by steamship, come from outside of the state.

A Yes, sir.

Q Are you familiar with the method of receiving the goods that come in by steamer and by freight line? Railroad freight line?

A Well, the steamship shipment, if its a less carload merchandise shipment, we haul it from the boat line with our own truck. Its unloaded on the platform, checked and carried inside the warehouse.

Q How far from the steamship dock is your warehouse?

A Well, we are situated right across the street from one.

Q Suppose a shipment by steamer is a carload lot. How is that handled?

A That's handled by the steamship company. It loads it in a car and its placed on a siding by one of the railroad companies.

Q And then who unloads that car?

A Well, the warehouse.

Q Who, in the warehouse?

A Well, we have a warehouseman.

Q What is his name?

MR. KURZ: Your Honor, I think that under the agreed statement, I think that is going into the very

matters that it was the purpose to obviate by that agreement.

THE COURT: I think you can go into what the various employees do in the warehouse. You have asked whether a particular employee did participate in the occurrence. Go ahead.

THE WITNESS:

A His name is Norman Sessions.

Q Did you, or have you ever, Mr. Brown, assisted in the unloading of these cars?

A Yes, sir.

Q Now, refer please to the shipments which come in by railroad from outside of the state of Florida. Will you please tell the Court how those shipments are received.

A Well, we have hauled them ourselves for a long time, and then recently it was changed.

Q Now, I am not sure that I understand what you mean by "we have hauled them ourselves."

A Well, I mean our trucks have picked them up at the railroad station and brought them to our warehouse. The merchandise received from the railroad company, and then he—it hasn't been so very long—I don't know how long ago, the length of time—but, the railroad companies are now delivering that merchandise to our warehouse.

Q By what means?

A By truck.

Q Do the railroad companies ever switch freight cars to your siding?

A Yes, sir.

Q And how are those cars unloaded?

A Well—

Q That is, who does the unloading?

A Well, its usually Sessions and myself.

Q And do those cars which they switch, and which are unloaded by you and Sessions, contain merchandise merchandise that comes from outside of Florida?

A Yes, sir.

Q Has that practice been the regular thing since you have worked at the Tampa Paper Company?

A Yes, sir.

Q You started to explain—before I interrupted you—how the goods were checked into the warehouse. Will you please continue with your explanation of that.

A Well, when the goods are placed on the platform, I check them and we cary them—.

Q By "platform", what do you mean?

A Our loading paltform in the front of the building.

Q Yes, sir.

A And then we carry them into the warehouse and place them in stock.

Q And, in the warehouse, do you have places for that type of merchandise, or do you just drop it on the floor?

A Well, we have a place for each kind of merchandise, if its going to stay in the warehouse.

Q Is there merchandise that you know is not going to stay in the warehouse when it comes in?

A Yes, sir.

Q And what happens to that merchandise?

A Well, if its an order for the city, its usually going—either goes out that day or the next day, and if its an order for a country delivery, we usually set the invoice up under the date which we make that town where the customer is located, and at that date it is shipped to them.

Q How do you know, Mr. Brown, when goods come in, that they are not going to stay in the warehouse?

A Well, I have the orders.

Q You have orders on hand for the goods?

A Yes, sir.

Q Mr. Brown, has it happend in your experience at Tampa, that such goods would come in and for which you have orders, have been delivered to the customers without ever reaching the warehouse?

A Yes, sir.

Q Will you please describe how those goods were handled.

A They were picked up by the truck, our truck, from the steamship company, brought to the warehouse and partly loaded on the platform, checked, reloaded and immediately sent to the customer.

Q And who did the checking?

A I did.

Q Has that practice been changed?

A Yes, sir.

Q In what respect?

A All merchandise now received must go inside the warehouse?

Q Is that the case, even if you have an order for those goods on hand and you know they are going right out?

A Yes, sir.

Q Mr. Brown, do you know whether it has ever happened at the Tampa warehouse that goods were picked up, goods from out of the state, were picked up at the terminals of the Seaboard, or at the steamship dock and trucked to a customer immediately?

MR. KURZ: Objected to on the ground that the witness testified that he was in the warehouse, as I understand it, and unless it is shown that he picked them up and personally had knowledge of it, he is not competent to testify.

THE COURT: Confine it to his own knowledge.

MR. BRODIE: Q Do you know—I believe I asked him whether he knew that that had happened.

THE COURT: Ask him if he knows of his own knowledge whether those things happened.

MR. BRODIE: Q Do you know whether that thing has ever happened at Tampa?

A Without coming into the warehouse?

Q Yes.

A Not to my knowledge.

Q Mr. Brown, do you know whether, from the Tampa warehouse, or the Tampa Paper Company, goods have been ordered for direct shipment to the customer and they have been shipped by the mill, direct to the customer?

A Without coming to our warehouse?

Q Yes.

A No, sir, I don't.

MR. BRODIE: May it please the Court, I find myself surprised by this witness' evidence, and I would like to refer to this witness' deposition.

MR. BRODIE: Q Mr. Brown, are you familiar, in general, with the method of billing customers for items carried in the coarse paper department?

A Yes, sir.

Q Do you know, Mr. Brown, whether it frequently happens that a customer is billed for the entire amount of an order but shipments of smaller amount are made to them from time to time and a reserve supply for that customer is kept in the warehouse?

A I have had knowledge of that fact.

Q Will you describe to the Court just how those orders were handled?

MR. KURZ: I object to those questions to this wit-

ness. It isn't shown he has had anything to do with the invoice, or the handling of the invoices. He said he was a truck driver.

THE COURT: Go ahead.

MR. BRODIE: Will you answer the question?

A Well, I do know that merchandise has been received, checked in, and the customer wouldn't want it all at one time, and we have put that merchandise in our warehouse and held it and delivered whatever amount he called for when he needed it.

Q Was any of that merchandise sold to other customers?

A No, sir?

Q Mr. Brown, in your experience as shipping clerk, have you become familiar with the type of goods that a customer, or your customers demand regularly?

A Yes, sir.

Q Can you tell the Court whether or not the goods that you handle in the warehouse are goods for which there is a regular demand by your customers?

A Please state the question again.

MR. BRODIE: Will you please read the question, Mr. Halter.

(The question was read).

A Yes, sir.

Q There is a regular demand?

A Yes, sir.

Q And for items for which there is no regular—on items for which there is no regular demand, what practice is followed in supplying customers' needs?

A Well, on items of printed merchandise, which we naturally wouldn't carry in stock, the order is taken by the salesman and sent to the mill. And then when it is received by us, why we ship it to the customer.

Q Does that cover goods from out of the State of Florida?

A Yes, sir.

Q Mr. Brown, let us go back to the direct shipments to customers for a moment. Do you know whether mill printed sales books from the Baltimore Sales Book Company have ever been shipped direct by the Baltimore Sales Book Company to your customers?

MR. KURZ: The witness has already answered that question. He said he does not know of any such direct shipments. I object to counsel trying to lead the witness?

MR. BRODIE: If your Honor please, I see nothing leading about that question. I think I have a right to refer to a specific item and then ask him if that is so. My understanding of a leading question is one which suggests the answer.

THE COURT: That was already brought out, that items not in stock are frequently shipped direct to the customer. Hasn't that been testified to fifteen or twenty times.

MR. BRODIE: Well, there seems to be some question about it on the part of the plaintiff.

THE COURT: I understand the testimony to be that the things regularly kept in stock, the orders are filled

from stock in the warehouse. If they do not have it, why then the orders are sent to the mill, and from the mill it is either sent directly to the customer or sent to the warehouse and delivered to the customer. That has been testified to time and again.

MR. BRODIE: Very well, I withdraw the question. You may cross examine.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Brown, you testified that it sometimes happens that merchandise is received and sent out directly to the customer on orders already on hand.

A Yes.

Q How often have you known that to happen while you were in Tampa?

A Well, we received orders, I should say, some every week that go immediately to the customer.

Q Do you recall a deposition in Tampa during this year? The first part of this year. Your deposition.

A No, sir, I don't.

Q Isn't it a fact that you were asked, "Since you have been in Tampa—"

MR. BRODIE: What page is that?

MR. KURZ: Page 24.

Q "Since you have been in Tampa do you recall any occasion which goods—" wait a minute. That isn't it.

MR. KURZ: No, that was not this witness' testimony. I withdraw that.

MR. KURZ: Q (How often, per week, would you say that happened?

A Well, it—sometimes—we have an average of three boats a week to Tampa from the different steamship companies, and we have a shipment of mighty near every boat, either one of the three boats, that will go direct on out to our customer.

Q You mean it doesn't come into the warehouse?

A Well, yes, sir, it does come into the warehouse.

Q Will you describe this loading platform that you testified about. Isn't that inside of the building?

A Well, the doors don't cover the platform. We have a grill out on front that we put our trucks in there and lock the grill at night, but the platform is outside—

Q The building is on both sides of the platform, out to the street, isn't it?

A Sir?

Q The platform is in a recess in the building, isn't it?

A Yes, sir.

MR. BRODIE: May I submit the witness should be permitted to answer the question without interruption.

THE COURT: Well, he has answered. I do not see that the witness is in any great jeopardy or perplexity in undertaking to detail where the loading platform is.

MR. KURZ: Q What is the usual custom with regard to merchandise received at Tampa? What happens when it is received from the carrier or from the truck line at the warehouse?

A Well, it is put on the platform and I check it in, and we—you know, we put it in the warehouse.

Q Hasn't it always been usual to put incoming merchandise in the warehouse?

A No, sir, not if it was a shipment going right out.

Q I am not asking you about shipments going right out. I am asking you about all of the incoming goods.

A Yes, sir, its the usual custom that we place merchandise for stock in the warehouse.

Q You have testified that all of the railroad shipments received in carload lots come from out of the state, have you not?

A I believe I have, sir.

Q Isn't it a fact that you receive a great many carload shipments of merchandise from Jacksonville?

A That is by St. Johns River Line Trucking Company.

Q Don't you receive any railroad shipments from Jacksonville?

A Not carloads, to my knowledge.

Q These orders that you have testified about that are received and delivered to customers right on receipt. Where would they be placed?

A We have a—we usually place them right in the front of the warehouse because we don't put them far back in the warehouse because it takes up time to go back and get them and bring them out on the platform again.

Q Are you referring to goods now ordered specially for a customer, or general stock items?

A Goods ordered specially for a customer.

Q How does that compare in volume with the regular stock items that you handle?

A Well, there's not so much—you mean in percentage? Or how?

Q In volume. Proportion.

A Well, there's not near as much that goes direct to a customer as there is stock for the warehouse.

Q The warehouse stock, as I understand it, you place in the warehouse.

A Yes, sir.

Q And then as you get orders from customers from time to time, you go to the stock and you select the stock and put it out on the platform and assemble the orders, and then they go out on the truck and are delivered. Is that correct?

A Yes, sir.

MR. KURZ: That is all.

THE COURT: Come down.

MR. BRODIE: May I ask one question, your Honor?

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. BRODIE:

Q Mr. Brown, you say that now the goods come into the warehouse and touch the warehouse floor, and you indicated that is a change from the method of handling those shipments before. When was that change made? Was it about the time the depositions were taken at Tampa?

A Just before the time.

MR. BRODIE: That is all.

THE COURT: Come down.

(Witness excused)

FRED RAWLS,
produced as a witness on behalf of the plaintiff, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRODIE:

Q Will you please state your full name, Mr. Rawls?

A Fred Rawls.

Q Where do you work, sir?

A Tampa Paper Company, at Tampa, Florida.

Q Just what is your job at the Tampa Paper Company?

A City desk and fine paper shipping clerk.

Q How long have you been employed on the city desk and as fine paper shipping clerk?

A About four months.

Q And before that, what was your job?

A Stock cutter and warehouse man.

Q How long had you worked as stock cutter and warehouse man?

A Just about all the time that I have worked for the company.

Q And how long has that been?

A Its been—well, around three and a half years.

Q Will you describe to the Court what you mean by referring to yourself as on the city desk?

A Well, I answer the telephone calls and handle all the—take care of all the calls of the fine paper department.

Q When you say, "take care of all the calls", do you mean orders?

A Yes. Write up all orders for fine paper.

THE COURT: You mean orders that are phoned in?

A Yes, sir.

MR. BRODIE: Q Included in fine paper, generally, are what kind of items as distinguished from the coarse paper?

A All printing papers and envelopes.

Q How about news print?

A Well, news print is considered in that line. News print. Envelopes. Bond paper. Thin paper.

Q Does that also include book papers?

A Book papers.

Q Ledger papers?

A Ledger papers and covers.

Q Shipping tags?

A Yes.

Q Do you know, Mr. Rawls, where most of your fine paper stock comes from? By that I mean does it come from points inside the State of Florida or from points outside of Florida?

A Most of it comes from points outside.

Q What connection have you with the ordering of fine paper to supply your customers' demands?

A I do most of the ordering myself.

Q Who has charge of the inventory records of the fine paper items?

A Well, I handle them some myself. Of course our stenographer, she does most of that.

Q Will you describe to the Court how the inventory of fine paper is kept.

A Kept on a cardex. They put on the cards everything that is received, and deduct each day, the previous day's business.

Q And by consulting the cards, are you enabled to know when to order a new supply of merchandise?

A Yes, sir.

Q Do those cards cover all the fine paper items you handle, or just those that are kept in stock at the warehouse?

A That covers everything we have in stock at the warehouse.

Q What happens on orders that you get for stock that is not in the warehouse?

A We don't have a card for that.

Q And will you describe to the Court how you fill such orders, particularly with reference to goods that come from outside of the State of Florida?

A It is for—if it comes in, it's marked for the customer with goods due on the receiving ticket, and is brought in and shipped out—

Q No, I mean, I am talking about the receipt of such goods. I am talking about the ordering of such goods.

A How is it ordered?

Q Yes, sir.

A Mr. Adkins usually handles anything like that. Of course something that he wants me to take care of, he will hand it to me and tell me to order it or hand it to the stenographer for her to order.

Q And how do either you or the stenographer or Mr. Adkins order it?

A Well, we order it on the branch house requisition and it is sent into Jacksonville and they in turn send it to the mill.

Q And to whom does the mill ship? To you or to Jacksonville?

A To us.

Q Do you receive any acknowledgment of the order from the mill?

A Yes, sir.

Q Do you receive any notice from the mill that the goods have been shipped?

A Yes.

Q What happens in that respect to stock items, the supply of which is exhausted when the order comes in?

A (No response).

Q Do you understand my question?

A I don't believe I do. Will you repeat it again, please, sir?

Q I can't say that I blame you. Just what is the practice of ordering items which you generally keep in stock, but the supply of which is exhausted at the time the order comes in? That is, you haven't any goods in your warehouse to fill that order at that time.

A Well, if we didn't have the goods in the warehouse at that time, we would order it from Jacksonville.

Q You order it from the—does it come to you from Jacksonville, or does it come to you from the mill?

A Well, if they have it, it comes from Jacksonville, but if they don't, we have to notify our customer and then it comes from another branch, or the mill, whichever is the cheapest and quickest way to get it there.

Q By what transportation means do finer paper items come to the Tampa branch from points outside the State of Florida, if you know?

A The majority is by boat.

Q And where are the boats unloaded, and will you describe how the goods are brought to the warehouse and shipped out to the customer?

A The goods that come in by boat are unloaded from the boat to the boat line warehouses and picked up by our truck and brought to our warehouse and put in stock there.

Q If there is an order on hand for those goods, what happens to them?

A They—we ship them on to the customer, if we have an order for them then.

Q Who checks the goods in when they come in from out of the state?

A I check a good bit of it myself. There's two others that had been checking some of it, too.

Q Do you ever receive goods from out of the state, Mr. Rawls, in railroad freight cars which are switched to your siding?

A Yes, sir.

Q I am referring now to fine paper as distinguished from coarse paper.

A Yes, sir.

Q Will you describe to the Court how those freight cars of fine paper from out of the state are unloaded?

A When they come up to our siding we have a gang board that we put to the car from the warehouse door. Some of it is trucked in with a hand truck, and some of it comes in on a four wheel float.

Q And who unloads the car?

A The man that is working in the warehouse.

Q Well, who is he?

A Mr. Baker and Mr. Valdez, and sometimes a truck driver helps, and sometimes I help, if necessary.

Q Have you, in the past, helped to unload freight cars?

A Yes, sir.

Q Have there been times, if you know, when everybody in the warehouse has taken a hand in that?

A Yes, sir. If necessary.

Q Mr. Rawls, does your company supply any news-print to printers?

A Yes, sir.

Q Does your company supply the Record Press with news print?

A Yes, sir.

Q Do you know how long the Record Press has been supplied by your company?

A Since I have been there that I know of.

Q When I refer to your company, I mean the Tampa branch.

A Yes.

Q Does that newsprint originate in Florida, or at points outside of Florida?

A Out of Florida?

Q Do you know, Mr. Rawls, whether the Record Press has a standing order with your company, or has had in the past, a standing order with your company for newsprint?

A We have always supplied them. Just how that was handled, I wouldn't be able to say.

Q Do you supply that same type or that same size of newsprint to any other customers?

A No, sir, not in that case.

Q Do you know, Mr. Rawls, in what quantities you receive newsprint for the Record Press?

A Well, we receive it in carload shipments and put it in our warehouse and then ship it to them as they needed it.

Q Do you know whether, Mr. Rawls, the mill supplying that newsprint has ever shipped direct to the Record Press?

A Well, that's the way they are handled now. We

notify Jacksonville when to send it, when to send in an order, and they send it in and it is shipped direct to the Record Press, in care of the docks at Tampa.

Q Who notifies Jacksonville? The Tampa branch?

A Yes, sir.

Q And when was that change put into effect?

A Near the first of the year.

Q Who bills that?

A It's billed in Jacksonville.

Q And until about the first of the year, who formerly billed those orders?

A The fine paper branch.

Q Sir?

A The fine paper branch.

Q In Tampa?

A Yer, sir.

Q Is the only chance then, in that type of business, the fact that the bill is now sent from Jacksonville instead of by Tampa?

A Yes, sir.

Q Do you know, Mr. Rawls, how many carloads, since January, 1941, have been received by the Record Press?

A Two or three.

Q Has the Record Press always ordered in carload lots?

A No, sir.

Q How was the business formerly handled?

A They would buy three hundred reams at a time and we would bill it out and ship it to them as they needed it.

Q You would bill out the entire three hundred reams at a time?

A Yes, sir.

Q And how many reams would you ship at a time?

A Oh, anywhere from thirty to fifty.

Q And where would the reserve stock be kept?

A In our place.

Q I am not sure that I correctly understood a point that we were discussing a little while ago with respect to the carload shipments made to Tampa. I understand that the car comes direct to Tampa from the mill.

A Yes, sir, it comes by boat, too.

Q Will you tell the Court what happens to that paper when it comes to Tampa by boat, now?

A Well, the boat line notifies the Record Press that it's there, and then they make arrangements to have it hauled.

Q Formerly did the Tampa Paper Company haul it to the Record Press?

A Yes, sir.

Q Mr. Rawls, does your company also do business in Label papers?

A We have label paper stock, yes, sir?

Q Can you tell the Court some of the customers to whom you supply label papers?

A Well, we sell it to anyone that wants it. Florida Grower Press. Tribune Press; and then we have others that use it. Just small quantities of it.

Q Do you supply the Hillsboro Press?

A Yes, sir. Hillsboro Printing Company.

Q Do you supply the St. Petersburg Printing Company.

A Yes, sir.

Q Do you know, Mr. Rawls, how the orders for the Florida Growers Press are handled for label paper?

A If its something that we have in stock, we fill it from our stock, and if it's something that they want that we don't have, we order from the mill.

Q And when it is something that you do not have in stock and it is ordered from the mill, is the entire supply delivered to the Florida Grower Press at once, or is some of it held in reserve at the warehouse?

A Large quantities, we hold it in reserve in the warehouse.

Q And how do you know when to deliver it?

A They notify us by phone.

Q Is that paper earmarked for the Florida Grower Press?

A The cases are stenciled for the Tampa Paper Company.

Q No, I don't mean that. Does the Tampa Paper Company hold that for the Florida Grower Press?

A Yes, sir.

Q Do you know whether the entire amount is billed at once, or whether you bill as you deliver it, or whether both practices are followed?

A It has been handled both ways. I wouldn't make a definite statement on that. I am not sure.

Q Are you familiar, generally, Mr. Rawls, with the use to which these label papers are put by the printers?

A Not in all cases, because not being able to visit them, I don't know much about just what they are used for.

Q Are you familiar, in some instances?

A Well, I know they are to make labels. Now, just what kind of labels,—that is, on the label paper particularly. They are used to make labels, but now as to the exact kind of label, whether box label or can label or crate labels, something like that, I wouldn't be able to say.

Q Do you know, generally, Mr. Rawls, the use to which this coated book paper is put, which you supply the printer?

A Well, they make the booklets and folders out of them for different resorts, and what not.

Q Mr. Rawls, is it—has it been the practice in the fine paper department to have shipments made direct from the mills to the customers in the past?

A Not recently; no, sir.

Q No, in the past. Before about the first of the year or so.

A Yes, sir.

Q Has that practice been changed?

A Yes, sir.

Q What change has been made in it?

A Well, we just don't have any direct shipments.

Q How are those direct shipments now handled?

A Well, like the news print is. Jacksonville takes care of that.

Q That is, it is billed through Jacksonville?

A Yes. If there had occasion to be any.

Q Sir?

A If they had occasion for a direct shipment, it would be billed through Jacksonville.

Q But the order would still continue to be received from Tampa?

A Yes. If it's in their territory.

Q Is chip board a fine paper item or coarse paper item, Mr. Rawls?

THE COURT: What?

MR. BROADIE: Q Chip Board.

A Chip board is a fine paper item, although the coarse paper does handle some cases of it.

Q Will you please describe to the Court just what chip board is?

A Chip board is a chip board that is used for the backing of tablets and scratch pads.

Q Is it also used for the making of boxes?

A Yes, sir, they make boxes and then cover them.

Q Boxes and what?

A They make boxes out of it and then it's covered with different colors of paper to make a fancy box.

Q Do you know where that chipboard comes from?

A No, sir, I don't know what state it comes from.

Q Do you know whether it comes from points within or from points outside of Florida?

A Points outside of Florida.

Q Do you know some of the customers to whom you sell chipboard?

A Most every one of our customers buy it at different times.

Q Well, can you name some of the customers?

THE COURT: Is that necessary, Mr. Brodie?

A Consolidated Box Company.

MR. BRODIE: Well, again, this is directed to the question of goods coming to rest. I want to show or develop that this is not the kind of case as was the Schechter case, where the goods went from Schechter, after reselling it, to the ultimate consumer.

THE COURT: Is it necessary to go into the name of each purchaser?

MR. BRODIE: No, but the point is this. That some of these people are outstanding in their fields, and they are people with which the Court, I am sure, is familiar, and the Court would be able to get a better picture of the type of business that is done by this company, and the type of industrial use with which these things are put, and the fact—

THE COURT: I am interested in use, but not necessarily the names.

MR. BRODIE: Very well.

MR. BRODIE: Q Do you know, Mr. Rawls, whether any of that board is used in making cigar boxes?

A I don't know that the chipboard is used for making cigar boxes, no, sir. Unless it's a particular kind that I wouldn't know about.

Q Now, are all sizes and weights of chipboard carried in stock at the warehouse?

A I don't know about all sizes and weights, no, sir. We have what we call stock items on it.

Q Do you ever get orders for items of chipboard which are not stock items?

A Yes, sir.

MR. BRODIE: If your Honor please, I do not want to ask a question on which the Court has already ruled, but I am attempting to develop something a little different from the type of thing I developed before. I would like to inquire from the witness if they supplied a particular customer, and whether he knows what that customer does.

THE COURT: I thought you were confining it to the industry itself. All right.

MR. BRODIE: Q Does your company sell chip-board to Consolidated Box Company?

A Yes, sir.

Q Do you know whether Consolidated Box Company makes cigar boxes?

A No, sir, I don't know whether they make cigar boxes or not.

THE COURT: Court will take a recess until two o'clock.

(Witness temporarily excused)

... And thereupon court adjourned, to be reconvened at 2:00 o'clock P. M., Friday, April 25th, 1941.

... And thereupon at two o'clock, p. m., Friday, April 25, 1941, Court reconvened, pursuant to adjournment, and the following further proceedings were had:

MR. FRED RAWLS,
having been previously produced and duly sworn, as a witness on behalf of the plaintiff, was recalled to the witness stand, and further testified as follows:

FURTHER DIRECT EXAMINATION

BY MR. BRODIE:

Q Mr. Rawls, you indicated in your testimony earlier, that on special orders which were transmitted to the mills from Tampa through Jacksonville, an acknowledgement of that order was made by the mill, and you were,—that is the Tampa Branch was notified by the mill, that shipments had been made. Is that practice confined only to special orders, or does that follow on all orders that come through Tampa? From Tampa through Jacksonville and on to the mill?

A We have an acknowledgement and freight bill on all shipments made.

Q And notification of shipment?

A Yes.

MR. BRODIE: You may cross examine.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Rawls, this acknowledgement that you just mentioned: From whom does that come?

A From the mill.

Q From the mill to Tampa?

A In some instances, it has. Most of the time it comes through Jacksonville.

Q Well, do you know what comes through Jacksonville?

A (No response)

Q When you said that you received an acknowledgement, did you mean that you received an acknowledgement in Tampa from the mill?

A Yes, sir.

Q All the time?

A I say that we receive an acknowledgement from the mill and most of the time it comes through Jacksonville, but at times we have received them direct from the mill.

Q If I understand you then, most of the times the acknowledgement is made to Jacksonville, is that correct?

A They come through Jacksonville, yes, sir.

Q And Jacksonville then advises Tampa?

A They send—forward it on to Tampa.

Q The newsprint that is sold to the Record Press, is that a stock item?

A It is.

Q When did the Record Press commence to order carloads of newsprint?

A Right close to the first of the year.

Q Prior to that time the shipments had not been in carload lots, is that correct?

A That's right.

Q I believe you have already stated on direct examination, that you personally did not know for what

purposes the book paper, sold by the Tampa Branch to its customers, was used, in any particular instance. Is that right?

A The book papers?

Q Yes.

A Is used to make folders and pamphlets of different things. Mostly for reports and things of that sort.

Q Have you seen that done?

A Yes, sir.

Q Where?

A In Tampa.

Q By whom?

A By the Hillsboro Printing Company, for one.

Q Do they buy exclusively from Jacksonville Paper Company?

A I can't say what portion, but they buy a good deal from us.

Q Do they print anything besides folders?

A Yes, sir.

Q What else do they print?

A Anything that they get an order for.

Q Did you ever go there and take an order and then see what they did with it?

A Did I take an order?

Q Did you deliver goods there and see what became of those particular goods that Jacksonville Paper Company sold them?

A Yes, sir.

Q When was that?

A Last—it seems like it was about two years ago.

Q Is that the last time that you have any personal knowledge of what was done?

A At that place, yes, sir.

Q You have stated that when you received orders for merchandise not in stock in Tampa, that you made a requisition on Jacksonville, I believe, is that correct?

A Yes, sir.

Q Where is that requisition most often filled from?

A Well, if it is something that Jacksonville has, they fill it, and if not, they forward it on to where it should go. If it is to the mill, or where else.

Q How often does that happen, that you make special orders of that kind?

A There is no certain times. It is just when it is needed.

Q Does that happen very often?

A Well, it can, yes, sir.

Q Well, does it?

A And it has happened and may happen two or three

times, now, and not again in two or three months.

Q Isn't it a fact that most of those special orders are filled from Jacksonville?

A Not a special order. If it is a stock item, and we are out of it, it can be filled from Jacksonville, but otherwise Jacksonville has the same thing Tampa has.

Q Are most of the orders that you make, the special orders for items that are those out of stock, or for items that are not carried?

A May I have the question again, please?

MR. KURZ: Will you read him the question.

... The question was read.

A Well, we make the most orders from items that—to replace our stock.

Q And if I understand you correctly, most of those shipments then, are made by Jacksonville?

A The small amounts, yes, sir.

MR. BRODIE: May I ask, your Honor, that Mr. Kurz specify whether he is now referring to some so-called special orders, or the regular orders. I do not think the witness understands it.

MR. KURZ: I am talking about special orders.

THE COURT: Special orders.

A If it is a special order, it is not filled from Jacksonville.

MR. KURZ: Q Let me see if you mean the same

thing by special orders that I do. When you have an order for an item that is not in stock, is that what you term a special order?

A I consider a special order for items that we do not list in our catalogue.

Q Well, as to orders which are not in stock, you said you requisitioned Jacksonville, did you not?

A Yes, sir.

Q Isn't it a fact that most of those orders are filled from Jacksonville?

A No, sir.

Q Didn't you testify in Tampa, when the depositions were taken, —

MR. BRODIE: At what page?

MR. KURZ: Page 126.

“Q As I understand it, you may have a customer that wanted something we didn't have, and we ordered it for them and it came to our Branch and we turned it over to the customer.

“A Yes. We have lots. A few orders like that.

“Q How frequently do those things occur?

“A Well, it doesn't occur very frequently. On something that's not a stock item. It's something that is a stock item that we happen to be out of, should run out of that item, we should have to order that. That happens often, but most of that comes from Jacksonville, and if they are out of that, they order something from the mill.”

Q Is that correct?

A Yes, sir.

Q You testified that on shipments made direct from the manufacturer to customers of the Tampa Branch, the order is placed by Mr. Williford. Is that correct?

A No, sir.

Q What is the customary method of handling that?

A Mr. Adkins handles most of those orders.

Q Mr. Adkins is the Manager of the fine paper department?

A Yes, sir.

Q And he sends the requisition to Jacksonville?

A Yes, sir.

Q And then shipment is made direct to the customer, as I understood you?

A No, not now, no sir.

Q I am speaking of shipments that were made or are now made by the mills direct to the customer. Is that not true? At all now?

A Only on the newsprint for the Record Press.

Q All other items then, are placed in the warehouse, is that correct?

A Yes, sir.

MR. KURZ: That is all.

REDIRECT EXAMINATION

BY MR. BRODIE:

Q Mr. Rawls, just before the series of questions and answers that were read to you by counsel, you were asked the following series of questions and answers:

MR. KUPZ: Now, your honor, I think it is improper to use the depositions to interrogate the witness. They may be used in an effort to impeach his present testimony, but if Counsel wants to ask the witness questions, I think that is the proper method of procedure.

MR. BRODIE: I submit, your Honor, that counsel has opened up the door by pruning something out of and context and apparently implying the witness is not telling the truth. I respectfully submit that I should be permitted to show what preceded that, so the Court can get the—

THE COURT: Hasn't it been actually inquired into already?

MR. BRODIE: In general, yes. I do not think that counsel should be permitted to imply that this witness is not telling the truth on the stand.

THE COURT: I did not get that inference.

MR. BRODIE: Very well, sir. Then I have just one other point to clear up.

MR. BRODIE: Q Mr. Rawls, there has been some discussion regarding your knowledge of what happens to some of the papers that are supplied by the Tampa Branch of the Jacksonville Paper Company to printers. Is the Patton Printing Company one of your customers?

A Yes, sir.

Q One of the Tampa Branch's customers?

A Yes.

Q Where is the Patton Printing Company?

A Located in Lee Terminal Building.

Q Where?

A Tampa, Florida.

Q Does the Tampa Branch sell paper to Patton Printing Company?

A Yes, sir. Yes, sir.

Q Do you know what kind?

A They have been selling them Scribe Bond, here recently.

Q Do you know what Patton Printing Company has done with that Scribe Bond?

A It has been printing labels out of it.

Q What kind of labels, if you know?

A That cheap can label.

Q Can, for what?

A For what, I wouldn't be sure in saying.

Q I mean, you mean the ordinary tin can in which fruit and other things are packed?

A Yes, the ordinary tin can, in which I believe are packed citrus juices.

Q Have you seen such labels?

A Yes, sir, I saw them at a glance.

MR. BRODIE: That is all.

RE CROSS EXAMINATION

BY MR. KURZ:

Q Does Patton Printing Company buy paper only from Jacksonville Paper Company?

A That, I could not say.

MR. KURZ: That is all.

(Witness excused)

MR. J. W. KNIGHT,
produced and first duly sworn as a witness on behalf
of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. BRODIE:

Q What is your full name, Mr. Knight, please.

A J. W. Knight.

Q Are you here under subpoena?

A Yes.

Q Subpoenaed on behalf of the plaintiff in this case?

A That's right.

Q What is your business, Mr. Knight?

A I am in the wholesale paper business.

Q What is the name of your company?

A Knight Brothers Paper Company.

Q How long have you been engaged in the wholesale business?

A About twenty years.

Q Paper business?

A Paper business.

Q And what is your position with the Knight Brothers Paper Company?

A President of the Knight Brothers Paper Company.

Q Have you, or do you now belong, or have you in the past, belonged to any trade associations of paper dealers?

A Yes, I am a member of the Southern Association and National Association. Our company is, at least.

Q Have you, yourself, ever been an officer of any paper trade association?

A Yes.

Q Will you please tell the Court what association and what office?

A Well, first I was vice president of the Southern Paper Trade Association and now I happen to be president of the Southern Trade Association, which is a part of the National Association.

Q And just what is included in the Southern Paper Trade Association?

A You mean the territory?

Q No, I mean the types of businesses.

A Well, all businesses that are distributing paper and paper products.

Q Where is your firm located, Mr. Knight?

A The home office, or all of it?

Q The home office, for instance?

A Jacksonville, Florida.

Q Do you have any branches?

A Yes.

Q Will you please tell the Court how many and where they are located?

A In Miami, Tampa, Orlando, Tallahassee, and Atlanta, Georgia.

Q Will you please tell the Court, Mr. Knight, generally, the extent of the territory your company services?

A Well, we travel and sell goods. Is that what you mean?

Q Yes. Where are your customers located?

A Florida, Georgia, South Carolina, Alabama, and a little in Tennessee.

Q Mr. Knight, is your company only a distributing company, or does it do any manufacturing?

A Well, we are what you call a converter, also. That is, take paper and make things out of it. We do not manufacture any paper.

Q What do you manufacture out of the paper, generally?

A Well, we manufacture all kinds of school papers, adding machine rolls, in small rolls, envelopes of various kinds.

Q Bags?

A We do not manufacture any bags.

Q Where is your manufacturing unit?

A Right here.

Q Does your company handle both coarse and fine paper?

A Yes.

Q Generally, what is included in each of those categories?

A Well, in fine papers, you include in that, all kinds of printing papers, which would be bonds and ledgers, flats, writings, book papers, plain and coated, weddings—

Q What do you mean by "weddings?" Do you mean announcements?

A Yes. Either way you want it.

Q That is the stock?

A Yes, that is what you wanted. What do you want to know?

Q That is in general?

A Envelopes are also in that line.

Q And coarse paper includes, generally, what?

A Wrapping papers, paper bags, toilet paper, paper towels, paper cups, and such items.

Q With respect to the distribution of fine papers, Mr. Knight, will you please describe to the Court just how the mills distribute fine paper through wholesalers and whether wholesalers have exclusive—whether it is the custom of the trade for wholesalers to have exclusive territory or not?

A Well, if you represented a—

MR. KURZ: Just a minute. We object to that line of questioning. It is purely cumulative, apparently. The method of handling and the custom of sales and so forth, has been pretty thoroughly developed in the case.

THE COURT: Is it purely cumulative testimony, or what?

MR. BRODIE: I do not think it is cumulative, your Honor. If it were, I would not offer it. I believe that there has been considerable doubt cast on this, and this man has been in business for many years, and a few questions will clear up what the custom of the trade, with respect to that, is.

THE COURT: You have direct testimony as to what the practice of this company is. Having that,

would you have a general custom. Would that be competent?

MR. BRODIE: I think the general custom would be competent, because there is some discussion here about whether a company is an agent or whether it is not an agent; whether salesmen come in or whether they do not come in. I want to show by this witness, that in effect, these various wholesale paper companies act as distributing agencies for the manufacturers. That they are essential manufacturers sales outlets. That the customers with whom they deal are too small for the paper mills to send salesmen out themselves, and it is more profitable to handle them through these outlets who are given exclusive rights in certain territories to handle certain papers; that the effect of a strike of the employees of the warehouse would indicate that all these exclusive brands that come from out of the state, could not be distributed within the state and that is the line I intend to develop with this witness now, and that is what this question is leading into.

THE COURT: That is what the witnesses have testified to. That is my recollection; that they have acted as distributing agents, and sometimes stocking merchants, but that they were the distributing agency for the manufacturer. I do not think that is in dispute. I think that has been brought out.

MR. BRODIE: I hesitate to press the point, and I do not want to put in anything that is cumulative. It seems there is considerable dispute on the part of the defendant. There is a dispute as to title passing and so forth.

THE COURT: I shall sustain the objection.

MR. BRODIE: Will Your Honor consider my statement then, as to what I intend to prove by this witness, as a proffer of proof under the rules?

THE COURT: Let the record show that the statement made by counsel is an offer to proffer the proof he stated:

MR. BRODIE: Thank you, sir.

THE COURT: The Court is of the view that general custom could not be taken as contradictory of actual facts as testified to by this particular company as to its method. That is what I am holding.

MR. BRODIE: Yes, I understand that, but we were offering this general custom as indicating, or as a background against which the Court would evaluate the testimony of these witnesses who were produced by the defendant.

THE COURT: I think it is cumulative.

MR. BRODIE:

Q Mr. Knight, are you in general, familiar with competition and the type of competition between distributors of paper products?

A State that question again, please.

The question was read.

A Well, I assume if—you want to know if we have it; yes, we have plenty of competition all right.

Q Is competition among—strike that, please. Do you know, Mr. Knight; whether in the paper trade it is the usual and normal practice for several distributors to sell to one customer?

A Yes, sir, they all call on the same trade. Particularly in a small territory like this.

Q Do you know whether—do you know on what basis paper distributors compete, generally?

A Well, I might know if I could just get in my system, what you are trying to get me to say. What basis? We send a salesman out, and we really work the trade.

Q I am not trying to lead you.

THE COURT: Is it generally on price and quality?

A Yes, we generally go after them on price, quality and service. All of those things. Cost, quality, service. They all enter into the thing. I didn't know what he meant.

MR. BRODIE:

Q On items of identical quality, price and service are determining factors?

A Certainly.

Q Relative to hours which officers and warehouses are kept open, how does the factor of service enter into the situation among dealers?

A Well, if a large house stays open longer than the others, of course, if somebody will want a couple of reams of paper, they could get it from there, whereas they couldn't get it from anybody else.

Q Mr. Knight, are you familiar with the percentage—strike that, please. Are you familiar with the percentage of labor costs as related to operating costs in the paper distributing business?

A Yes, I think I know a little about that. I will put it this way. So far as we are concerned, I know

something about it, and I know something about it also from the figures published by the National Trade Association.

Q And what is the percentage, approximately, of labor cost, to operating cost. That is, what percentage of operating cost is made up of labor cost?

A About two thirds of it. Now, would that exclude salesmen or not?

Q Well, suppose we exclude salesmen then?

A Well, I would say—if you exclude salesmen, I would say about sixty per cent.

Q And including salesmen, it would be about thirty-three percent?

A No, if you put salesmen in, it will run up to about eighteen per cent. It runs his—I don't mean eighteen per cent. I mean the whole cost of this thing would run around eighteen or nineteen per cent. That is the way it averages up today.

THE COURT: Wait a minute. You said sixty-six and two thirds, and now we have eighteen.

MR. BRODIE: I do not think my question was very clear, and I think I can clear it up.

MR. BRODIE:

Q Assuming the total cost of sales, Mr. Knight, at one hundred per cent?

A Yes.

Q That would include overhead and the cost of goods?

A Yes, sir.

Q Of that one hundred per cent, what percentage would be made up of operating cost? That is, exclusive of cost of goods?

A About eighteen or nineteen per cent. Some of them run as high as twenty per cent today.

Q And of that one hundred per cent—?

A Yes, sir.

Q —What percentage of the cost would be labor cost? Direct labor cost?

A Not including sales?

Q Not including cost of sales?

A Around twelve per cent.

Q If, therefore, there is a necessity of raising wages, does that raise the—would that affect the cost of doing business?

A Sure.

Q Mr. Knight, I believe you stated a few minutes ago, that you had a home office in Jacksonville and you indicated that you had some branches. I do not recall if you stated where the branches were or not,—oh yes, I believe you did.

A Yes, sir.

Q Are any of those branches, branches which do not ship goods outside of the State of Florida?

A Yes.

Q Which are they?

A Orlando and Tampa and Miami.

Q To get back a moment to this question of increased labor cost. Does that affect the price at which a distributor would have to sell his commodity?

A Well, it may and it may not. They may increase their cost and swallow it themselves and not raise the price, because competitive conditions may not permit them to.

Q Well, then, would this be a fair answer then: Would it either increase the cost at which you had to sell, or decrease the profit at which you do business?

A One or the other would have to take effect.

MR. BRODIE: I am not sure whether that matter of the sixty-six and two thirds per cent is now clear to your Honor.

THE COURT: I still don't know what that is.

MR. BRODIE: The sixty-six and two-thirds is twelve per cent as related to eighteen per cent, the twelve per cent representing labor cost of sixty-six and two-thirds of operating cost, which is eighteen per cent of the hundred.

THE COURT: All right.

MR. BRODIE:

Q Mr. Knight, does your firm comply with the Fair Labor Standards Act in all its branches with respect to wages paid and hours worked by employees?

MR. KURZ: Objected to as a conclusion of the witness.

THE COURT: Sustained.

MR. BRODIE:

Q Mr. Knight, does your firm pay to the people who work for it in all branches, not less than thirty cents an hour for all hours worked up to forty?

A Yes.

Q Mr. Knight, does your firm at all branches at which it operates, pay to all employees, time and a half their regular rate of pay for hours worked in excess of forty, in any work week.

MR. KURZ: Objected to on the ground it is immaterial and irrelevant.

THE COURT: Sustained.

MR. BRODIE: Will your Honor hear me on that?

THE COURT: No. We are trying this concern.

MR. BRODIE: Sir?

THE COURT: We are trying the Jacksonville Paper Company and Southern Industries Company.

MR. BRODIE: Yes, that is true, but the Act was passed to accomplish certain purposes. Those purposes were alluded to by Mr. Kurz. Among those purposes was the elimination of unfair competition resulting from long hours and low wages. Unfair competition in interstate commerce.

THE COURT: Objection sustained, Mr. Brodie.

MR. BRODIE: All right, sir. Will your Honor consider that as an offer of proof under the rules?

THE COURT: You proffer it. All right.

MR. BRODIE:

Q Mr. Knight, do you consider that your business is included, and all its branches is included within the Fair Labor Standards Act?

MR. KURZ: Objected to as immaterial and irrelevant.

THE COURT: Sustained. Every man is presumed to have complied with the law, Mr. Brodie.

MR. BRODIE: Well, this is not the point. I respectfully suggest to your Honor, and your Honor cut me off—

THE COURT: I think all of the matters you are presenting is a matter the Court will take judicial notice of.

MR. BRODIE: That may be, but in order to determine what is interstate commerce and what falls within the purview of this Act, it seems to me, and the Supreme Court has held, that the Court must know the background against which the Act operates. If your Honor will permit me, I have that subject briefed, and I would like to refer you to authorities on that point.

THE COURT: I am satisfied. Go ahead and do something else. The Court knows that if two concerns in the same line of business, one complying with the Act and the other one not complying with the Act, that the one that does comply with the Act is at a disadvantage over the other one who does not. And the Court knows that of its own knowledge. It is a matter that is common knowledge of all men and it is not necessary to take testimony on it. And further, the law is that people who comply with the law, are laws that are ap-

plicable to them. And, if it be in this case that the defendant is under the law and has not complied with it, the Court judicially knows that that is an unfair advantage over those in the same line who are confined to it. Does that make clear my position?

MR. BRODIE: Yes.

THE COURT: Very well.

MR. BRODIE: I think I understand your position perfectly. I am not sure I have made my position clear.

Q Mr. Knight, does your firm compete with—do the branches of your firm compete with the branches of the Jacksonville Paper Company?

MR. KURZ: Objected to, Your Honor; it is the same line of questioning we have been going into.

THE COURT: I think he has already answered it. He said he was operating in the same territory and there was plenty of competition.

MR. BRODIE: He stated it generally. He has not stated it specifically, that there was competition. If that is admitted, I will not press it.

THE COURT: I think that has been established.

MR. BRODIE: Under those circumstances, I have no further questions of this witness.

CROSS EXAMINATION

BY MR. KURZ:

Q Mr. Knight, you testified that the cost of labor had an effect upon either the price to be charged or the profit to be made in the sale of products. There are

other elements of expense connected with doing business by paper concerns, are there not?

A Certainly.

Q Besides labor costs?

A Sure.

Q Do they not fluctuate with the different concerns, depending on the methods of operation?

A Well, I can't state that definitely. I only know what the National Paper Trade Association issues, showing the comparative costs in the country, and I only know that ours run right along with it.

MR. KURZ: I move the statement of the witness, as to what the National Paper Association comparisons show, be stricken, because that is hearsay.

THE COURT: Overruled.

MR. KURZ:

Q Would you say that all of the expenses of operation are equal,—except labor, are equal, with all companies doing business in the paper line?

A No, I don't think so. I think there would possibly be some other things in there. Item for rent. Some pay more rent, some less rent. By the square foot. It is all based on the square footage. It should be.

Q In other words, eighty-eight per cent of operating costs would be apt to fluctuate in different localities and with different operators, would it not?

A Not to any particular extent, if our association knows anything of what they are doing. They cover the entire United States.

MR. KURZ: I make the same motion with respect to the Association figures, unless it be shown he has some direct knowledge on how the comparison is made and if it is a comparison entitled to evidentiary weight, then the comparison itself, would be the best evidence.

THE COURT: That is true, but it seems to me all these details, that it is so obvious, on a matter of this kind, that even a dumb Court ought to know. I haven't been very technical in my ruling—.

MR. BRODIE: We did not, your Honor, in putting on this witness, mean to imply anything like that to this Court.

THE COURT: Most of these things are common knowledge. I do not mean cost of labor operations and percentages. I do not mean that. But I do know that the profit an individual makes, or relative costs of one party's operation to another's, is not the same in all cases. The methods of operation. The judgment of the management; whether they can buy for cash and take trade discount. The rent they pay. I know there are very variable things. Mr. Knight might make money and Mr. Kurz might go broke in the same kind of business. I realize that.

But as to the general proposition, as to approximate relative costs of labor to operation, I think all we need is some approximate idea.

MR. KURZ: I have no further questions.

MR. BRODIE: I have no further questions.

(Witness excused)

THE COURT: I do know definitely that labor costs

have a very definite bearing in the field of production, competition and profit.

MR. GEORGE S. WHEELER,
produced and being first duly sworn on behalf of the
plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. BRODIE:

Q Have you stated your full name for the record,
Mr. Wheeler?

A George S. Wheeler.

Q Will you speak up so that the Court can hear you,
please, sir? Where do you live, Mr. Wheeler?

A Vienna, Virginia.

Q By whom are you employed?

A By the Department of Labor, Wage and Hour
Division.

Q In what capacity?

A Senior Economist.

Q How long have you been an economist in the Uni-
ted States Department of Labor, or with the Govern-
ment?

A Since the summer of 1939.

Q Will you describe to the Court, Mr. Wheeler, your
educational and professional qualifications? Were you
graduated from college?

A I was graduated from Reid College, Portland, Oregon, in 1929.

Q And what did you do after that?

A The next year I taught economics there while continuing my graduate studies.

Q Proceed.

A In the fall of 1930 I went to the University of Chicago and continued my graduate studies in economics while assisting Dr. H. A. Millis, who was dean of the Department of Economics.

Q Is he the Dr. Millis who is now chairman of the National Labor Relations Board?

A That is correct.

Q During the course of your graduate studies at the University of Chicago, and assisting Dr. Millis also, tell the Court what you did generally.

A I took a general course in economics, in graduate studies, that is, economic theory, money and banking business, psycho-theory and specialized in study of labor problems, collective bargaining and during all the period of time I was at Chicago, I was Dr. Millis' personal research assistant.

Q And as Dr. Millis' personal research assistant, did you assist Dr. Millis in the preparation of any books?

A He was preparing a volume which subsequently was published as a treatise on labor problems, entitled, "Labor's Progress and Problems." That covered nearly the entire field of labor relations, collective bargaining and social insurance; Minimum wage legislation; hours of labor and things of that sort. It is a very comprehensive story of industrial relations.

Q Just what did you do in assisting Dr. Millis on that book?

A I did a good deal of research work and I prepared some of the rough drafts of the manuscript itself.

Q The book, however, was not published in your name, was it?

A Oh, no.

Q Did Dr. Millis give you any acknowledgement?

A Yes, very generous acknowledgement.

Q When did you come with the Government, Mr. Wheeler?

A In the summer of 1934.

Q As an economist?

A Yes.

Q Will you describe the type of work you have done since then with the Government?

A I have made studies of the causes of industrial disputes. I have made studies of collective bargaining conditions in various industries; wages; hours of labor; the operations of the industry itself, that is, where an industry gets its raw materials and how it distributes its products; how it converts, or just how various industries have operated.

Q Mr. Wheeler, have you published anything?

A Well, one of the things I published is a bulletin entitled, "The Relationship of Collective Bargaining in the Bituminous Coal Industry to Interstate Commerce."

Q Has that publication been referred to by any court?

A I believe that a court did refer to that in the Crowe Coal Case.

MR. BRODIE: That is reported at 104 Federal (2nd), 819, if your Honor please.

Q While with the Government, Mr. Wheeler, did you prepare the economic data for any briefs which were supplied to the Supreme Court?

MR. KURZ: Your Honor, in order to save the witness any possible embarrassment, we admit he is qualified on the subject.

THE COURT: All right.

MR. BRODIE:

Q Mr. Wheeler, you described awhile ago the studies of various industries that you have made. Will you please tell the Court what industries have been included in those studies?

A Since I came with the Wage and Hour Division I have made studies of the lumber industry, the food packing industry, meat packing, cigar box and cigar industry, the several branches of the wholesale trade, including grocery wholesaling; warehouses distributing to department stores, and paper wholesaling, among others.

Q You say, since you have come with the Wage and Hour Division. When was that?

A On October 15, 1938.

Q How did you make your studies of these various

THE COURT: Let us get down to this one.

A Confining myself to this one, that was a combination of field studies, with research, with various published documents. My assistants and myself consulted a great number of Governmental publications, trade publications, and some private publications, or publications of research organizations that relate to this industry.

Q Before we get into that, Mr. Wheeler, at my request did you have prepared under your direction a map showing the various points from which some of the material distributed by the Jacksonville Paper Company and its branches come?

A Yes.

Q Where did you get the information regarding the sources of that partial list of supplies?

A It was a typewritten list which has been submitted in evidence here.

MR. BRODIE: I offer this map in evidence. I have a smaller copy for the Court.

A It is hard to read.

The instrument last above referred to was received and filed in evidence and marked Plaintiff's Exhibit Jacksonville Paper Company No. 3.

MR. BRODIE:

Q Now, let us go back to the sources from which you made your investigation, Mr. Wheeler. Will you tell the Court what Government publications you have consulted?

A I—.

MR. KURZ: If the Court please, we have already admitted the qualifications. It seems to me—.

THE COURT: I think he is dealing with the study he made on this particular industry. You admitted his qualifications and I do not suppose it is necessary to go any further, is it?

MR. BRODIE: No, sir.

Q Is one of the private research groups you have consulted the Twentieth Century Fund?

A Yes, it is.

Q Will you tell the Court what the Twentieth Century Fund is? Who are the people connected with it and what it does, and as to its connection with this particular industry?

A The Twentieth Century Fund is an endowed research organization which has for its purpose the conducting of studies chiefly in the social sciences, as to various social problems which the board of trustees regards as being important.

Q Do you know who the board of trustees are, can you name some of them?

A Oh, there are quite a list of them. Some of them—.

THE COURT: Judge Brodie, haven't his qualifications been completely admitted?

MR. BRODIE: I am qualifying the Twentieth Century Fund, because I want to present the result of their investigations.

A Among the trustees are Robert H. Jackson, Francis Biddle—.

Q The present Solicitor General?

A The present Solicitor General.

Q Suppose I give you this and ask you if that refreshes your memory?

A Yes. A. A. Berle.

Q That is the present Assistant Secretary of State?

A Yes. Henry S. Davidson; William Allen White. There is quite a list. Do you want to read them all?

Q Do you know whether the Twentieth Century Fund has made any particular study of distribution?

A They have made quite an authoritative study entitled, "Does Distribution Cost Too Much".

Q Do you know under whose direction that study was made?

A Yes, that was made under a special committee headed by Willard Thorpe.

Q Do you know whether that study has received any official recognition?

A Yes. It's a very authoritative study. It has been referred to, among others, by the Temporary Economic Society in one of its monographs, Monograph No. 7.

Q Do you know whether it has been referred to in any of the decisions of the Supreme Court?

A I believe it was—

Q Or any of the Circuit Courts of Appeal.

A I believe it was; in some railway decision on—

MR. BRODIE: If your Honor please, may I state for the record that Twentieth Century Fund and its studies have been referred to by Justice Stone in the *Virginian Railway Case*. I think that is reported in 300 *United States*, and also by the Circuit Court of Appeals for the Third Circuit, in the *Griswald Case* against the Labor Board. I am not sure of the citation on that. I think it is around 160 *Federal* (2nd), or 112 *Federal* (2nd).

Q In connection with the study of distribution, Mr. Wheeler, has the Twentieth Century Fund prepared any graphs or charts?

A Well, they prepared at least one, which was entitled, "The Flow of Goods in the United States."

Q Do you know whether that chart has received any official recognition?

A Well, that was republished in modified form in this bulletin known as Monograph No. 7, which I previously referred to.

Q That is the monograph of the Temporary National Economic Committee?

A Yes.

Q Published by the Government Printing Office?

A I may add the modification was simply changes to delete the color. The chart is essentially the same.

Q Is this the chart to which you referred as published by Twentieth Century Fund?

A Yes.

MR. BRODIE: May I have that chart marked for

identification, please, as plaintiff's Exhibit Jacksonville Paper Company No. 18?

The instrument last above referred to was marked for identification as Plaintiff's Exhibit Jacksonville Paper Company No. 18.

MR. BRODIE: At this time, if the Court please, I would like to offer Exhibit Jacksonville Paper Company No. 18, in evidence.

MR. KURZ: The defendant objects to the introduction of this chart in evidence because its relevancy to this particular case has not been made to appear.

THE COURT: Well, let it go in. We will see what relevancy it has, later, I guess. If not, you can move to strike it.

The instrument last above referred to was received and filed in evidence and marked Plaintiff's Exhibit Jacksonville Paper Company No. 4.

MR. BRODIE:

Q Mr. Wheeler, will you please describe just what that chart is and what it describes with respect to distribution by wholesale distributors?

A This chart in general describes the flow of goods in the United States from their origin in agriculture, imports and extractive industries, through manufacturing or processing and through what is called in this chart intermediary trade, which is synonymous with wholesale trade, and through intermediary trade to retailing and ultimately to consumers. That is the general description of the movement of commodities from the time they are processed until the time they are consumed.

Q Does that chart, and do the studies that you have made, indicate the function of a wholesaler in the distributive system?

A Yes, the function of a wholesaler is indicated there as intermediary trade. The term "intermediary Trade" is used to indicate it is part way in the flow of goods from the manufacturing and the extractive industry, to the retailer and the consumer. This also indicates, of course, the complexity of the movement. For example, these curved lines that go back in the manufacturing industry, you will see the red line returns to manufacturing industries. That indicates that some manufacturers sell to other manufacturers and even that, some wholesalers sell to manufacturers and to other wholesalers. The general pattern of the movement is indicated, however, as from the extractive agricultural industries through processing and through wholesaling to the consuming public.

Q You have described the movement through the wholesaler to ultimate consumers, and also through the wholesaler to other wholesalers and manufacturers; to industrial users. Do you know, Mr. Wheeler, whether the business of the Jacksonville Paper Company, in all of its branches, is illustrated by any of the movements on that chart?

A Yes, it is. It would be specified as in this intermediary trade, as a wholesaler, with the bulk of its sales shown, for example, as going to retail distributors or industrial users.

Q How would printers be classified? Would they be classified as retail distributors, or industrial users?

A They would be classified ordinarily as industrial users. For example, the sales to the public utility, in Chesapeake Telephone Company—not Chesapeake—.

Q I don't believe that has yet been introduced in evidence. But confine yourself for the moment to sales to printers.

A A sale to a printer would be classified as a sale to industrial users.

Q How about sales to ice cream companies?

A They might be classified either as a sale to a retailer or a sale to an industrial user.

Q And sales to newspapers?

A They would be similarly classified; probably sales to the retail trade.

Q Now, Mr. Wheeler, in your studies of distribution, have you had any occasion, or have you studied the relationship of turnover and movement of commodities to profit?

A Yes, I have.

Q And will you describe to the Court what relationship the turnover of commodities has to profit?

MR. KURZ: Your Honor, I think that all of these things are extreme generalities and after all, we are concerned here with the particular business and the particular methods pursued, and what any particular item may do to profits in general, or profit of a particular business, would hardly seem to be indicative of the intrastate character of the business done by these branches.

MR. BRODIE: If your Honor please, it has been suggested, and the defendants' case rests upon the premise that the goods come to rest in those warehouses.

THE COURT: I know what the theory is. I will let it go in. There is a conflict in theories there. That is part of one of them.

MR. BRODIE: Will you read the question, Mr. Halter?

Q (The question was read).

A Other things being equal, the more rapid the turnover, the greater the profit.

Q And do you know, Mr. Wheeler, whether wholesalers make any money on keeping goods in storage?

A No. They ordinarily—ordinarily a wholesaler of the type such as Jacksonville Paper Company, would not make any money at all out of storage. In fact, the longer stuff is kept on hand, the less they make out of it.

Q Mr. Wheeler, have there been any studies made by the United States Bureau of the Census respecting the paper distribution business in Florida?

A Yes, there has, a very recent one.

Q Were similar studies made for Georgia and Alabama?

A Yes; and other states in the union.

Q I show you three census documents prepared by the United States Department of Commerce, "Wholesale trade, Florida," "Wholesale Trade, Georgia," and Wholesale Trade, Alabama," and ask you if they are the Census Bureau studies for 1939 for those areas.

A Yes, they have just been published.

Q Do they include any reference to wholesale paper distribution?

A Yes, specifically; they give totals for wholesale paper distribuiton, as to the number of establishments, the volume of sales, operating expenses, number of employees, payrolls.

Q Have you compared the total businss done by Jacksonville Paper Company, as supplied in interrogatories furnished by the defendants, with the business done by all Florida distributors, Mr. Wheeler, as indicated in those official documents?

A Yes, I have.

Q Have you prepared a schedule of that material?

A In regard to sales, I have, yes; not as to all of them.

Q Is that the schedule you have prepared?

A Yes.

Q Will you indicate, Mr. Wheeler, how the business done by Jacksonville Paper Company, that is, sales by Jacksonville Paper Company for all of Florida, compared with all the sales by all Florida paper distributors, as indicated in the census report of the United States Bureau for the Census, 1939?

A It is approximately one-half. It is forty-six per cent, to be exact. That is out of \$4,644,000.00 worth of sales, the Florida branches of Jacksonville Paper Company—that is exclusive of the branches outside of the state did—\$2,162,251.00.

Q Did the census report indicate, Mr. Wheeler, how many wholesale paper distributors there are in Florida?

A Yes.

Q Or were, in 1939?

A Yes, it does. It does that and it is broken down to the major cities in Florida.

Q For the whole state, how many were there?

A There were thirty-five paper wholesalers in Florida.

Q Have you also compared the volume of business done, the total volume of business done by all paper distributors in the areas in which the Jacksonville Paper Company—in each of the areas in which the Jacksonville Paper Company has a branch, with the business done by that branch?

A Yes. That is by cities.

Q All right. Will you please tell the Court how many wholesale distributors of paper there are in Miami?

A In Miami there are six paper wholesalers.

Q And will you please tell the Court what percentage of the Miami business is indicated in the census report as done by the Miami Branch of the Jacksonville Paper Company?

A The total volume of business done by the paper wholesalers in Miami was \$1,095,000.00 Jacksonville Paper Company did \$435,000.00 worth, or thirty-nine per cent.

Q Will you please give the Court that same information with respect to each branch of the Jacksonville Paper Company in the State of Florida; St. Petersburg, Florida?

A St. Petersburg, Florida, three paper wholesalers who did a volume of business, sales, \$198,000.00. Jacksonville Paper Company did \$75,000.00 worth of business in 1939; thirty-seven per cent.

Tampa, Florida, and Lakeland, Florida, combined, six paper wholesalers with a business of \$905,000.00. Jacksonville Paper Company, \$456,856.00; fifty per cent.

Orlando, Florida, five paper wholesalers with sales amounting to \$262,000.00; Jacksonville Paper Company, \$103,000.00; thirty-nine per cent.

Q Does that cover them all?

A Except for Jacksonville itself, including Jacksonville Paper Company, which did \$833,000.00 worth of business as compared with \$1,777,000.00 for several paper wholesalers. That is forty-seven per cent of the business done in this area.

Q Does the census report also indicate the business done in Macon, and have you compared that with the business of the Macon branch?

A There are three paper wholesalers in Macon, Georgia, doing sales of \$402,000.00. Jacksonville Paper Company sales were \$194,999.00, or forty-eight per cent.

Q How about Mobile?

A Mobile, four paper wholesalers with \$349,000.00. Jacksonville Paper Company's total was \$226,964.00, or sixty-five per cent.

Savannah is the only remaining one. Three paper wholesalers, \$344,000.00 worth of sales; Jacksonville Paper Company, \$212,786.00, or sixty-two per cent.

Q Did you give the information respecting Tallahassee and Pensacola?

A Tallahassee and Pensacola were not reported separately in the census.

Q Mr. Wheeler, have you in the course of your work made any studies of strikes in wholesale industries?

A Yes, I have.

Q I show you a certified copy of a report by the United States Department of Labor containing data respecting strikes in wholesale trade industries. I will ask you to, by referring to that, tell the Court the number of strikes in wholesale industries that occurred during 1939 and what their causes were.

MR. KURZ: Objected to, your Honor. It has not been shown there have been any strikes in Florida in the paper industry. What the general wholesale strike situation in the United States is, certainly is going far afield.

MR. BRODIE: I can go into that. I understood the witness' qualifications were admitted. I skipped a lot of questions. I would be very glad to develop it.

THE COURT: He admitted his qualifications. What you are speaking of is immaterial. However, I guess according to the preamble of the Act, it is pertinent. I will let it go in.

MR. BRODIE:

Q Do you recall the question?

A This document was prepared by the Commissioner of Labor Statistics from the official sources of information with regard to labor disputes. The Bureau of Labor

Statistics is in charge of collecting that information and specifying the disputes by causes. This indicates that in the wholesale trade there were seventy-seven strikes in 1939 and 6,862 hours were involved, with 100,565 man days idleness. Thirty-three of those strikes were over wages and hours. 3,842 workers were involved in those strikes, and 64,000 man days of idleness resulted.

MR. BRODIE: I offer this in evidence. It is an official document.

MR. KURZ: No other objection except the one already made.

THE COURT: Let it be received.

The instrument last above referred to was received, filed in evidence and marked Plaintiff's Exhibit Jacksonville Paper Company No. 5.

THE COURT: We will take a ten minute recess.

Thereupon an informal recess was had, following which the following further proceedings were had:

MR. BRODIE:

Q Mr. Wheeler, apart from the statistical data which you have investigated, have you, yourself, made any investigation of the strikes in the wholesale trades by field trips and field investigations?

A Yes, I have.

Q Will you tell the Court some of the strikes, particular strikes and among what wholesalers you have made a personal investigation?

THE COURT: Mr. Brodie, hasn't Congress, in the preamble of the Act, found all these facts that are being testified to existed, and that is what the Act is designed to relieve? And hasn't the Supreme Court held, in the Darby Case, I believe it was, that the Court or jury cannot take issue with Congress?

MR. BRODIE: That is true, your Honor. I am, of course, not attempting to impeach the findings of Congress. What I am attempting to show now is actual strikes, to show precisely what will happen, and to show how commerce, in effect, will actually be tied by strikes among similar wholesalers.

THE COURT: Hasn't Congress already declared those situations to exist in fact?

MR. BRODIE: Congress has declared that strikes burden interstate commerce; strikes over wages and hours. Here again we come into the question of what is interstate commerce.

THE COURT: Yes, that is what I am interested in.

MR. BRODIE: Interstate commerce, I respectfully submit, your Honor, is not something static, nor a static concept—

THE COURT: If I say so, it doesn't make it so.

MR. BRODIE: No, that is true.: But in determining what Congress meant in using the words "interstate commerce" in this Act, we have to consider all the purposes of the Act, the background against which it was passed, and what happens when there is a strike in a particular industry such as this, so we can determine when congress said "interstate commerce" in this Act, it meant a particular thing. Interstate commerce, as Justice Stone pointed out in the Virginia Railroad case—

THE COURT: I think the Act itself has made a declaration of those facts. They are matters that proof is not required on.

MR. BRODIE: It occurs to me, your Honor, that in order to determine what Congress meant by the term "interstate Commerce," which is something, of course, that is not considered in a vacuum, but must be considered against the realities which Congress has in mind when it legislates, we have to see what happens, for example, when there is a strike of the employees of the distributor in the paper industry.

THE COURT: I think the Court knows. Let us go on to some other phase of it.

MR. BRODIE: I wanted to show how the strike is not localized to a little area, but extends far afield by the impact of that strike, such as the impact of a strike, we will say, at Tampa, and the branch of Tampa, would not be confined to Tampa, but would affect interstate commerce because it would mean goods shipped in from Maine would not be unloaded; orders cancelled. I want to show how that all happened in other instances, so the Court can determine whether that would happen here, and whether that branch is engaged in interstate commerce within the meaning of the Act. That is what this testimony is directed to develop.

THE COURT: I do not suppose there is any dispute about that. I suppose we all recognize the fact that strikes interfere with interstate commerce, and strikes in any industry or any business in which goods are flowing in interstate commerce will, to some extent, impair the flow of goods in interstate commerce. I think that is a self-evident and obvious fact, without sending an expert here to tell it.

MR. BRODIE: Very well, sir.

THE COURT: And in saying that, the Court has no superior knowledge but it is a matter of common knowledge.

MR. BRODIE: Will your Honor permit me to offer, as a proffer of proof—?

THE COURT: Yes, let the record show you offered to prove that which the Court already knows; that strikes in an industry of any importance has a bearing upon interstate commerce to some extent.

MR. BRODIE: Will your Honor permit me to introduce evidence that there was a strike in this region in a paper industry, paper distributing industry, and the strike resulted as a dispute over wages? Specifically I offer to prove by this witness that at the Atlanta Paper Company in Atlanta, a company which serves communities in Georgia, Alabama, North Carolina, South Carolina, and Florida, that there was a strike resulting from a dispute over wages and hours, and that that strike affected all branches of the company, including the branch in Macon, and that it stopped production and distribution of goods in interstate commerce, and that this witness investigated that strike?

THE COURT: Will you admit there was such a strike as that, Mr. Kurz?

MR. KURZ: I don't know of any particular strike. I think a strike which particularly causes—

THE COURT: I know if they had one, it did do that.

MR. BRODIE: I will also offer to prove that strike lasted about six months and was settled recently.

THE COURT: Let the record show that you proffer that testimony and the Court declined to receive it.

MR. BRODIE: My proffer specifically is that strike lasted from October 1940, to February, 1941, at the Atlanta Paper Company.

THE COURT: Very well.

MR. BRODIE: You may cross examine.

MR. KURZ: The defendant moves to strike the testimony of this witness as to the percentages of the business done by the Jacksonville Paper Company in that it is based upon a fact that is not in evidence. The interrogatories, as I understand it, that were propounded, have not yet been introduced.

MR. BRODIE: If that is the case, I will offer these interrogatories in evidence now, if I may.

MR. KURZ: I would like to get them in.

THE COURT: I beg your pardon?

MR. KURZ: I would like to get the interrogatories in evidence, so we will have those figures. That having been done, I will withdraw the objection.

THE COURT: Very well. Go ahead. We will consider the interrogatories as having been offered and received.

MR. KURZ: Thank you, your Honor.

CROSS EXAMINATION

BY MR. KURZ:

Q. As I understand this chart that you introduced, it is a general chart dealing with commerce in a general way, is that right?

A Yes.

Q Do you recognize any distinction between commerce that relates only to the limits of the state in that chart?

A No, the chart does not distinguish between commerce which comes in from outside of the state and commerce which is interstate commerce. No distinction there. That is, it doesn't distinguish between commerce which raises outside of the state and ends within the state, and commerce—that is, the different ways in which that commerce moves.

Q In other words, it does not recognize any such thing as goods coming to a state of rest in a state and thereafter becoming local commerce?

MR. BRODIE: I object to that.

THE COURT: Overruled.

A Yes, it does indicate that it comes to rest at the consumer, but not at the wholesaler.

Q It then is based upon the theory that interstate commerce does not come to an end until the goods reach the ultimate consumer?

A Well, it certainly does not come to rest at the wholesaler.

Q Well, I am asking you now about this chart and not about your conclusion as to what interstate commerce is.

A Well, I meant in the chart. My answer related only to the chart.

Q You testified about the business done by paper

concerns which you have enumerated. Is all the paper of the type handled by Jacksonville Paper Company sold only through concerns of the type that are taken into consideration in the compilation?

A All of the paper concerns which would be handling and distributing goods would be taken into account in that chart. Is that your question?

Q That is my question. I am not speaking of the chart now. I am speaking of the compilation by the census.

A The census classification is given here—it includes both fine and coarse paper dealers. Is that your—?

Q Well, that isn't it exactly. May I have that memorandum, please?

A Yes.

Q I believe this is. Your figures as to Miami, and your testimony as to Miami shows that there were six paper wholesalers in Miami doing a certain volume of business.

A Yes.

Q Do those six paper wholesalers handle all of the products, all of the paper products that are sold in that territory?

A Do you mean are they the only ones who sell—?

Q Who sell at wholesale paper of the general type of paper handled by the Jacksonville Paper Company?

A That included all of the companies whose major business is that. Some company outside of the state might sell in Macon and might be included among the Macon distributors.

Q But it does include all of the firms in the particular city which sell papers at wholesale? Is that your testimony?

A Both coarse and fine.

Q In other words, when you say that the six paper wholesalers in Miami did \$1,095,000.00 worth of business during this period, you infer from that, that that is all of the business of that type done in that territory, is that right?

A No. Those six may sell outside of the territory. They might sell in North Carolina or South Carolina. Similarly, other people doing business in Raleigh might sell in the Macon territory. There would be no way of segregating those sales for census purposes. They simply took the total volume of sales reported by those firms as strictly comparable; the two sets of figures.

Q Do you know that it is a fact that most wholesale groceries sell a certain quantity of paper products?

A Well, a few items that would not be classed in this group. They are not what is ordinarily known as a paper wholesaler.

Q But they do sell paper products, do they not?

A They might sell paper bags, tablets.

Q Would they obtain those from manufacturers direct?

A Ordinarily not.

Q You personally do not know, do you?

A Oh, I have examined the accounts of the American Stores Company, for example, which is a very large—

Q Who?

A The American Stores Company, which is a grocery, and they ordinarily do not handle very many items of that kind. A small country grocer might handle quite a variety of tablets and things of that sort.

Q I am speaking of wholesale grocery houses, distributors. Isn't it a fact that they handle paper bags and items of that kind quite extensively?

A Yes.

Q Those sales do not, or would not be included in those figures, would they?

A No.

Q So that the total sales figures shown here are not actually the total sales of these particular goods in that territory, or made in that territory?

A Oh, no.

THE COURT: Those figures are the totals of materials sold by the six Miami paper houses?

A Yes, those companies.

THE COURT: And it doesn't take into consideration paper and merchandise and towels and those things sold by drug stores and retailers?

A These people would be selling to those people.

THE COURT: Those figures there represent paper sold by the six houses in Miami?

A Yes; the wholesale houses.

MR. KURZ:

Q But the wholesale grocers handle at least a certain number of similar items and sell them direct to the customer, and those figures are not included, so that the percentages of sales purported to be shown here by the Jacksonville Paper Company are not actually accurate percentages of those sales of products in the territory?

THE COURT: As I understand his testimony, it shows the percentage of the sales of Jacksonville Paper Company in the various towns, as compared with the total sold by other similar businesses.

A That is correct.

MR. KURZ: Yes, sir. That is all.

MR. BRODIE: I have no further questions.

(Witness excused)

MR. BRODIE: If your Honor please, we have these interrogatories now and as to Southern Industries, we offer interrogatories 1, 2, 8—.

THE COURT: Interrogatories and answers?

MR. BRODIE: Interrogatories and answers; and as to Jacksonville Paper Company I offer interrogatories and answers No. 3, 4, 5, 6, 7 and 8.

I think there was something in these answers that I wish to object to. I wish to object to the statement made in exhibit A-1, or rather, I do not wish to be bound by introducing these interrogatories into evidence by the statement that these branches at Macon, Miami, Orlando, St. Petersburg, Tampa, and Lakeland and West Palm Beach are intrastate nor do I wish to be bound by further statements describing those as intrastate. That seems to be gratuitously offered by the defendant, and I submit we should not be bound by that sort of testimony.

THE COURT: I think you made it quite clear that you do not agree with the defendants with reference to those branches.

MR. BRODIE: As this time, with the Court's permission, I call for the depositions taken at the Tampa branch of the Jacksonville Paper Company.

Q May I open these, your Honor?

THE COURT: Very well.

The instruments last above referred to were produced and opened.

MR. BRODIE: Of these depositions I desire to offer into evidence the depositions of Mrs. H. A. Teneyck, Mrs. Fred L. Lewis and Lee Parker. I have also depositions of two other witnesses on the question of violations, Willie Brooks and Dan Massey, and I proffer, as a proffer of proof, merely as to admissions of counsel, that as to those witnesses the Act has been violated, along with the others whose testimony I am proffering in evidence. I do not want to encumber the record with their testimony since it relates only to violations and not to the interstate commerce.

I hesitate to burden the Court by any reading of these depositions. However, it occurred to me we might merely introduce these in evidence. However, your Honor has indicated a desire to hear only the oral testimony and oral argument immediately at the close of this case. If that be so, I do not know how this evidence is going to get to the Court unless we read it.

THE COURT: What is the substance of the testimony of the witnesses? I mean, what general line of testimony.

MR. BRODIE: The testimony relates generally to

the type of business done at Tampa and the various places from which materials are received. What the particular witness does in connection with the flow of goods through the warehouse; how goods go through the warehouse; how goods come in and are sent out; the various methods of receiving and delivering to customers, such as direct shipments, pick-ups from the carriers.

THE COURT: It is cumulative along those lines?

MR. BRODIE: To some extent cumulative; to some extent corroborative, and to some extent it ties down and makes more clear certain of the testimony of other witnesses.

THE COURT: If it is agreeable to counsel and if you will append a memorandum to those depositions, the particular ones introduced, I would prefer to read the depositions at a later time. If that is agreeable.

MR. BRODIE: That is what I had in mind, your Honor.

THE COURT: You have a great volume of depositions there, some of which have not been introduced. I would like for you to either write on them in pencil or in some way let it be known what depositions you are offering.

MR. BRODIE: Yes, your Honor. I was concerned particularly, however, with the question of these depositions as related to oral argument before your Honor, since your Honor would not have all the testimony.

THE COURT: You will have the right to offer them. But I will have to read them later on. It will take up a great deal of time.

MR. BRODIE: This volume also includes depositions taken at St. Petersburg, Lakeland and Orlando. With

regard to those it is our understanding that the testimony developed with respect to Tampa is to be considered as typical of the way the business is done at the other branches, with certain exceptions, relating to the shipments out of the state from Tampa and shipments to Nassau by Miami. There is no contention that St. Petersburg, Orlando and Lakeland have shipped goods outside of the State of Florida. With those exceptions, the testimony of Tampa, we understand, in accordance with the agreement made in chambers yesterday, would be considered typical of the course of business at these other branches, and there would be no necessity for introducing the same sort of testimony relating to the other branches.

THE COURT: That is my understanding of the agreement entered into yesterday.

MR. KURZ: May I make a statement there in connection with the statement he just made? It is our contention also that those branches at Lakeland, St. Petersburg and Orlando sell no special orders. For instance, the order characterized as the Record Press, or items of the sort ordered specially for a particular customer; that they do occasionally order direct. It is rather difficult to make a general statement of that kind to the Court now, without checking up in detail as to each of those branches. I think that that could be done by the time that oral argument was had, and if there is any disagreement then as to those points, that the depositions might be then introduced, if that is satisfactory to counsel.

MR. BRODIE: We may want to introduce some other evidence on this. I understand that the question of law with respect to Tampa is substantially the same as it is with respect to these other branches and coverage at Tampa will be followed by coverage at the others, and that the Court was interested in learning how the busi-

ness generally was carried on. It seems if there is going to be an exception now of Tampa, as something different, counsel might be implying by that that Tampa is in interstate commerce and we proved a wrong kind of case as to his view as to Tampa, and now he wants us to go ahead and prove the case with respect to the others, which we are prepared to do. If that be the case, we are going to require probably several more hours of proof.

THE COURT: What exceptions, particularly, Mr. Kurz, do you wish noted between Tampa and other branches? On yesterday we had the understanding that with some slight exceptions, particularly some sales from Tampa to outside points, had not been made by these other branches. That was one that was specifically mentioned. What others do you have? See if it can be stipulated on.

MR. KURZ: Well, it appears as to Lakeland there were no special orders.

MR. BRODIE: Where does that appear, Mr. Kurz?

MR. KURZ: On page 268 of the testimony.

MR. BRODIE: Well, it also appears by the testimony of the manager that there were special orders which were sent to Tampa; page 284.

MR. KURZ: —

THE COURT: Is there some confusion as to what you mean by special orders? It seems like Mr. Kurz had an impression that it was something ordered out of the state, sent direct to the customer. I think there has been some confusion by the use of that term.

MR. BRODIE: By special orders generally we mean orders for items not in stock and which have to be ordered from out of the state to be filled.

THE COURT: You mean not in stock in the state?

MR. BRODIE: Yes. That it requires an order to a point outside of the state to fill. And on the other type of transaction, we have used the term "direct shipment", generally from the mill, to the customer; and my recollection is, without wishing to be bound by any representation that isn't so, there have been such direct shipments and such special orders at Lakeland. We do admit that there is no evidence that goods have been shipped from Lakeland to points outside of the State of Florida. I think it is also true that there is no fine paper department at Lakeland. That is another exception. Am I correct in that, Mr. Kurz?

MR. KURZ: I think that is correct.

MR. BRODIE: Lakeland has only coarse paper.

THE COURT: This newsprint is fine paper, isn't it?

MR. BRODIE: Yes.

THE COURT: It is an—

MR. BRODIE: We do not contend that Lakeland sells to the Record Press.

MR. KURZ: No sales similar, especially newsprint.

MR. BRODIE: But there is testimony of special orders of other items in the coarse paper department, and direct shipments of flat wooden spoons.

MR. KURZ: I haven't checked up yet on these interrogatories that were introduced. I have the numbers, but can you, Mr. Brodie, point out to me the file they are in?

A discussion was had off the record.

MR. KURZ: May we take a recess for a minute or two so I can check over to see what differences are, if any?

THE COURT: How long will it take? Ten minutes?

MR. KURZ: Ten minutes, I think.

THE COURT: Very well. I think we might take a recess anyway.

MR. KURZ: I think we might make a little progress, your Honor. The only exception we want to make as to the branches are Macon, Orlando, West Palm Beach, Miami, and Macon, is that they do not sell to the Florida Growers Press, about which there has been special testimony in Tampa.

MR. BRODIE: We concede that there is no evidence that those branches sell to the Florida Grower Press.

THE COURT: Let the record show that.

MR. KURZ: That is all.

MR. BRODIE: Then may we have it clearly understood, then, that in all other respects except for the matter of shipments out of the state, Tampa will be taken as typical of the other branches in dispute?

THE COURT: That is understood.

MR. KURZ: Yes, that is right.

MR. BRODIE: An injunction in regard to Tampa will be followed with regard to others, or an adverse ruling will be followed in the same respect, against the Government.

THE COURT: Unless the sales outside of the state make a different situation.

MR. BRODIE: Yes, I understand. May I point out to the Court, Macon and Miami are not excluded from that, because they have made sales outside of the state, and that is in evidence. But West Palm Beach, Orlando, Lakeland and St. Petersburg have not made shipments out of the state.

THE COURT: Is that understood?

MR. KURZ: That is understood.

MR. BRODIE: At the request of counsel for the defendants, interpretative bulletin No. 4, as revised, issued by the Wage and Hour Division of the United States Department of Labor, as plaintiff's exhibit Jacksonville Paper Company No. 6.

The instrument last above referred to was received and filed in evidence and marked Plaintiff's Exhibit Jacksonville Paper Company No. 6.

MR. BRODIE: The plaintiff rests, your Honor.

Your Honor, may we discharge all of the witnesses who are here from out of town?

THE COURT: Is that agreeable?

MR. KURZ: That is agreeable.

DEFENSE:

MR. A. S. REINOHLE, was produced and first duly sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. KURZ:

Q Mr. Reinhoel, in connection with interrogatories propounded by the plaintiff in this case, to the Jacksonville Paper Company, did you examine the records pertaining to interstate sales and returns from the two out of state branches, and other shipments made beyond the state line by the branches, in which it is not admitted that the branch is engaged in interstate commerce?

A Yes, sir.

D Does that show the percentages of those returns to total volume of business done? Of those sales and returns, to the total volume of business done?

A I think those percentages are shown on that answer, yes, sir.

MR. KURZ: We offer in evidence exhibit F attached to the Interrogatories propounded to the Jacksonville Paper Company.

MR. DOWNING: Objected to, your Honor, on the ground that the other exhibits attached to the answers introduced by plaintiff show the number, the frequency and the amount of such interstate sales and shipments, and under the decision of the Supreme Court the mere matter of percentages is not relevant. The exhibits offered in evidence by the plaintiff show that there was a substantial number of such sales and shipments by certain branches, and more frequent in the case of some of the branches. The mere cold matter of percentages is not relevant.

THE COURT: I think it is relevant. I may not be conclusive.

MR. DOWNING: I hate to differ with your Honor, but I think in the Santa Cruz case and the Feinblatt case there has been a suggestion that the percentage is not material in determining whether Interstate Com-

merce is involved. What might be a very low percentage in the case of a large manufacturer might be a very substantial amount and could clearly involve interstate commerce. We have a concern here that does three million dollars worth of business a year. It is obvious that one per cent or less of its business is a substantial amount, sufficient to involve interstate commerce.

THE COURT: I will let it go for whatever bearing it might have.

The instrument last above referred to was received and filed in evidence and marked defendants' Exhibit A.

MR. KURZ:

Q With reference to Southern Industries Company, Mr. Reinohl, do you keep the payroll records of that company?

A Yes, sir.

Q Have you heard the testimony on yesterday of Mr. J. C. Geohagan, with regard to the payment by him, out of salary earned by him, to some other employees that he named?

A Yes.

Q What was the type of work done by Mr. Geohagan?

A Geohagan is a broom maker.

Q What were these other employees?

A Ordinary laborers.

Q Mr. Geohagan's pay, I believe, is calculated on the number of brooms that he made, is it not?

A Yes, sir.

Q What record did you have which would tie in the number of brooms produced with the amount paid for wages, for the production of those brooms?

A The stock record is charged with the total number of brooms as reported as having been produced. Against this is credited, of course, the credits from the plant.

THE COURT: I did not understand your answer, Mr. Reinohl.

A The stock record is charged with the number of brooms as produced by these pieceworkers.

MR. KURZ:

Q Would the fact that Mr. Geohagan had been paid for brooms not produced by him shown up in the stock record then?

A It would make the stock record short! a shortage.

Q Did any shortages appear in the stock records at that time?

A No, sir.

Q And these other laborers to whom he said he paid a part of his wages were not producing brooms, were they?

A No, sir.

Q Will you state what efforts the Southern Industries Company made to comply with the Fair Labor Standards Act after about the time of its adoption?

MR. DOWNING: Objected to, your Honor. I do

not think that is a relevant inquiry at this point. The issue is whether they complied with it, and not whether they made some attempt to comply.

MR. KURZ: Your Honor, the purpose is this: I deem it quite necessary to show in connection with our contention, not that motive has any bearing on the violations, but that it would have a bearing on whether or not there is any reason to believe that violations would continue, and inasmuch as it is our contention that we had complied with the Act for a considerable time prior to the filing of the bill of complaint, we want to introduce evidence to show the efforts made to rebut any presumption which might arise from existing violations, as to a continuation thereof.

MR. DOWNING: Your Honor, as I recall the plaintiff's case on Southern Industries, put in by Mr. Spitz, violations were shown on a number of working foremen and mechanics, down to date. What efforts the company may have made two years ago in an effort to get in compliance does not seem to me to be relevant at this time.

THE COURT: Under my ruling, Mr. Kurz, I do not believe that would be pertinent. I think you can proffer that evidence.

MR. KURZ: The defendants doing business as Southern Industries Company make a proffer of proof to show that shortly after October 24, 1938, the persons in charge of the company placed the Southern Industries plant on a basis of forty-four hours per week; that that was made effective December 8, 1938; that shortly thereafter it was discovered from time to time that the instructions of the company's officers had not been carried out by the superintendents, due to misunderstanding and so forth, and that as soon as any of these irregularities appeared in the records received by Mr. Reinohl, steps were taken to correct them; that in pursuance with that plan, a time clock was ordered during

October, 1939. Prior to that time, timebooks had been kept, but to overcome any irregularities or any discrepancies that might arise, this time clock was ordered and received about January 1, 1940; that from that date on, every employee was required to check in and out on this automatic time recording system; that here again, shortly after the clock was stalled, when employees were required to report for work at a given hour, sometimes they would arrive ahead of time and not being required to work, would nevertheless record in on the time clock and then resume their outside activities, making a difference sometimes of ten or fifteen minutes, or a few minutes, in the actual hours shown, or actual hours worked, as shown by the time clock; and that as soon as that was discovered, steps were taken to correct that situation. The purpose of all of this proffer of proof being to show that it was the intention of the company to carry out the requirements of the law in every respect, and that during all of these times the minimum rate of pay established by the company for its employees, other than those claimed to be in an executive capacity, was not less than twenty-five cents per hour for the base period permitted by the law and if overtime was worked, time and a half of that. When the act required the reduction of hours to forty-two hours, the schedule was changed to forty-two hours and the rate of pay increased to thirty cents as required by the act, and overtime paid to all of the employees other than those contended to be in an executive capacity.

That many of the employees received more than the minimum pay prescribed by the Act.

THE COURT: Is that all of the proffer?

MR. KURZ: That is all of the proffer.

THE COURT: Let the record show the proffer was made and the evidence has been rejected.

MR. KURZ:

Q Did you, sometime ago, check the records pertaining to various employees named in the bill of particulars, to show the time worked and the wages paid to them during the period set up in the bill of particulars?

A Yes, sir.

Q Will you use—is that the memorandum that you have?

A It is.

Q Refer to page 15, Sonata Aultman.

A Yes, sir.

Q Will you state how this extra five hours of time worked during that particular week of October 5, 1939, arose?

A That was in connection with the moving of the plant.

Q What particular work did this employee do at that time?

MR. DOWNING: Objected to unless the witness can show that he has knowledge of what this employee was doing. This man is an office man. Here is a plant employee, production employee, who was out of the main office doing some moving work. Obviously this witness can have no knowledge of what the employee was doing at the time.

THE COURT: Do you know of your own knowledge about that?

A Only from the records.

THE COURT: What do the records say?

A That this party was an employee in the bag department.

THE COURT: Didn't you say he was engaged in moving?

A Yes, sir. That was in addition to the regular employ. That was the record from the regular duties.

THE COURT: Do you know what he was doing, yourself?

A No, sir.

MR. KURZ: Do your records show that, your extra labor voucher?

A I think so, sir.

MR. DOWNING: The record is the best evidence of that. The extra labor voucher can be produced.

THE COURT: Yes, it will take quite a lot of time to look through them. Do you insist on that?

MR. DOWNING: Your Honor, I would also like to make this objection: That it is immaterial that Sonata Aultman was engaged in moving. They were hours worked during the same week. The records show he was engaged in work covered by the act and without getting into a question of moving, it would be an activity covered by the act and he would have to be compensated for the entire week according to the Wage Hour standards, since he was engaged the greater part of the week producing goods for interstate commerce, and that would be immaterial and irrelevant.

THE COURT: I will let it go in. I do not know

whether it has any bearing or not. I hope we do not have to go checking time sheets again.

MR. KURZ: I do not want to take up any more time than I can help.

Q Mr. Reinohl, in connection with the arrangement made in April, 1940, of hours and wages, did you prepare schedules of employment for the various branches?

A Yes, sir.

Q Will you state whether these schedules are a copy of the schedules that were sent to the branches?

A Yes, sir, they are.

MR. KURZ: We offer these in evidence, your Honor.

MR. DOWNING: May I ask a question? Mr. Reinohl, are these the schedules which were prepared for use after April 27, 1940?

A Yes, sir.

MR. DOWNING: We now object to the introduction of the schedules, your Honor, for the reason that they relate to the period subsequent to that in which violations have been admitted by the defendants. And we had understood from your Honor's ruling that the injunction was being granted in the branches where coverage had been conceded or admissions of violations, down to April 27, 1940.

THE COURT: Considerable testimony was brought out by the plaintiff yesterday dealing with this schedule. It is merely in relation to some evidence that you brought out.

MR. KURZ: It is the same thing. We want to com-

plete the testimony as to that particular situation so that it will be all before the Court rather than just the—

MR. DOWNING: In that connection I had not completed my testimony on that score when I was interrupted by the ruling as to the violations having been admitted down to April 27. There are several features of that contract that we would like to bring into evidence by other witnesses; witnesses locally who we have released.

THE COURT: I think it is explanatory of the witnesses' testimony brought out yesterday, relating to that method of trying to establish some schedule.

MR. DOWNING: We would like to have it understood that we would like to have the privilege of submitting further matters on that contract.

THE COURT: I thought it was pretty well gone into. I will let it go in as explanatory of the testimony that was brought out by the plaintiff on yesterday.

The instrument last above referred to was received and filed in evidence and marked defendants' Exhibit B.

MR. KURZ:

Q In connection with the re-employment of various employees of the company at that time, I believe you stated on yesterday that an employment notice was sent out to the employees. I hand you herewith a notice dated April 29, 1940, addressed to J. V. Chastain, and ask you if that is illustrative of the type of notice that you testified about.

A It is, yes, sir.

MR. KURZ: We offer that as explanatory of the witness' testimony on that point.

MR. DOWNING: Objected to on the ground there has been no evidence establishing the delivery of such notices to any of the employees of the Jacksonville Paper Company or any of the branches.

MR. KURZ: The witness testified that he himself delivered some of them in Jacksonville and that he had ascertained and been informed through various sources that they had been delivered in the branches.

THE COURT: I will let it be received as explanatory of the witness' testimony and of the evidence that went in concerning it. I do not consider it as evidence, but as explanatory.

MR. KURZ: I think that particular situation is rather important, and I think the evidence should be complete on it.

The instrument last above referred to was received and filed in evidence and marked defendants' Exhibit C.

THE COURT: It is a little difficult to understand the evidence unless you have these papers.

MR. KURZ:

Q As I understand it, Mr. Reinohl, the schedules that we have introduced as Exhibit B were sent to the various branches and were posted at the branches, is that correct?

MR. DOWNING: Objected to. It is obvious this witness in the main office at Jacksonville can have no knowledge of the posting.

MR. KURZ: I will qualify that:

Q Do you go to the branches?

A Yes, sir.

Q Frequently?

A Yes, sir.

Q Have you seen those notices posted at the branches?

A I don't think that I have been to any of those branches since those notices were sent out.

THE COURT: Objection sustained, unless he knows.

MR. KURZ: In the depositions we had here, there is quite a bit of testimony as to those notices having been posted.

MR. DOWNING: I think there was testimony at one of the branches that the notices were posted, but not the others.

MR. KURZ: Well, those branches where the notice appears to have been posted will be admitted in evidence as posted?

MR. DOWNING: Will you designate those?

MR. KURZ: Not off-hand, but I can Monday. Mobile is one, I believe; Tallahassee is another, and probably Savannah.

MR. DOWNING: The plaintiff will concede that the depositions taken at Savannah establish that the notice was posted there.

THE COURT: Let him answer the question. Were they sent out with instructions to be posted?

A Yes, sir.

THE COURT: In the usual course of business?

A Yes, sir.

THE COURT: Were you ever advised whether or not they were posted?

A I have acknowledgments from several of the branches that they were.

THE COURT: Do you have any information of any source, conversations with any of the employees, or inquiries made of the employees, whether or not they had seen them?

A No, sir.

THE COURT: Pursuant to that schedule, were payrolls later made out and payments made to the employees under it?

A Yes, sir.

THE COURT: Was that schedule in effect for a considerable length of time?

A Yes, sir.

THE COURT: Were payrolls made under it and payments made to the employees in all of the branches under that schedule?

A Yes, sir.

THE COURT: According to that schedule?

A Yes, sir.

THE COURT: I think that is sufficient.

MR. KURZ: That is all, Mr. Reinohl, thank you.

MR. DOWNING: Without waiving our objection to the entering of those exhibits in evidence, I would like to cross examine Mr. Reinohl with reference to this matter.

CROSS EXAMINATION

BY MR. DOWNING:

Q Mr. Reinohl, the payrolls which you state were made up on a basis of those schedules: As I understood your testimony yesterday, or the day before, those payrolls are customarily made up before the record of any time is received from the branches?

A That is correct.

Q When the time records are received from the branches, do they frequently disclose that the employees worked a different number of hours than is called for on the schedule?

A That information was shown on the accumulated time records, yes, sir.

Q That does not answer the question, Mr. Reinohl.

MR. DOWNING: Will you read the question, please, Mr. Reporter?

(The question was read).

A Yes, sir.

Q And the payroll is made up to exhibit direct that

the particular employee worked the number of hours specified on this schedule?

A The payroll is made up to exhibit that the employees are paid on the hours indicated by the schedule.

Q Is the only record of hours on the payroll the total number of hours shown by these schedules?

A I don't get your question.

MR. DOWNING: Will you read the question?

(The question was read).

A We have time sheets.

Q I am asking you about the payroll records, Mr. Reinohl. Is not the only record of hours shown on the payroll, the weekly payroll, this number which is carried on the bulletin?

A Yes, sir.

Q The payroll contains no record of the hours actually worked during the particular week?

A The payroll itself does not.

Q I have understood your former testimony to be the employees purportedly employed under this agreement do not generally work the number of hours set up in the bulletin?

A The employees working on this schedule do not always work that number of hours, no, sir.

Q Have you not previously testified in our deposition taken in Jacksonville that the employees do not generally work the number of hours called for in the schedule?

A I am not sure just how I worked that. The answer is practically the same. Has the same meaning.

Q I will ask you if in your deposition taken in Jacksonville on March 5th, the following question was asked you and if you did not answer as follows: (Page 223).

"Q Do I understand that customarily the salaried employees do not work the scheduled number of hours?

"A Do not always work the number of hours for which they are paid."

The further question:

"Q Is it not true that they seldom work the scheduled number of hours?

"A Well, there are cases when they do work the scheduled number of hours."

Do you recall that testimony?

A Yes, sir.

Q The further question:

"Q Are they not infrequent?

"A Well, it is not a regular practice. They are not regularly required to work this scheduled number of hours."

Is that correct?

A That's right.

"Q Generally, are not the actual hours worked less than the scheduled hours?

"A In a good many cases, yes."

A Yes, sir.

Q As I understood your testimony yesterday or the day before, you also stated that the salaried employees hired, or purportedly hired, under the new arrangement, still continued to work generally the same number of hours they had before?

A The new employees did, yes, sir.

Q And generally they did not work the number of hours purportedly called for by the schedule?

MR. KURZ: Your Honor, there has not been anything brought out in this examination, unless counsel is going to reopen and re-examine the witness on the points he already covered.

THE COURT: Confine your questions to the cross. I do not think that is in cross, Mr. Downing.

MR. DOWNING: I understod your Honor asked the witness a number of questions—

THE COURT: Purely and simply to find out if that schedule or notice of it was brought home to the employees, was all.

MR. DOWNING: It occurred to me, or I seem to remember that the payroll was made up on the basis of this schedule and it lasted over a period of time in the usual course of business.

THE COURT: It was all for the purpose of determining whether the employees would likely have knowledge. That was all. For the purpose of determining whether or not it would be admissible in evidence or whether the employees, in the usual course of

business, would be expected to have knowledge of the existence of that statement. That was the only purpose of my questions.

MR. DOWNING: Q Mr. Reinohl, have any changes been made in these schedules since they were made out and sent out to the branches?

A Yes.

Q What were the occasions for those changes?

A There were increases given to the employees.

Q Did they take on some new job or new type of work?

A Well, not necessarily.

Q Why was it necessary to change the schedule of hours?

A They were being paid for an additional number of hours.

Q Did they work an actual number of hours, Mr. Reinohl?

A No, sir.

Q Were they told they were going to have to work an additional number of hours?

A They were given a copy of the schedule showing the required number of hours, yes, sir.

MR. DOWNING: The answer is not responsive and I ask the Court to strike it.

THE COURT: Motion denied.

MR. DOWNING: Q Mr. Reinohl, were the employees notified at the time of the raise that they would be required to work additional hours?

A That information was shown at the time of the increase, yes, sir; on their payroll change notice.

Q Have you any schedule or notice present which purports to give such a notice?

A No, sir.

Q Do you recall the depositions that you made, the testimony

“Q What was the reason, if you know, for increasing the scheduled hours in the above cases?

“A It was simply a means of increasing their pay by paying them for additional hours.”

Q Do you recall that line of questioning?

A Yes, sir.

Q Do you recall this question and answer:

“Q Was it contemplated, if you know, that the employee would work additional hours?

“A None of the employees are required to work their full scheduled hours. They are paid at the regular rate and one and a half of the scheduled hours even though they do not work the full hours.

“Q At the time the raises were given, was it contemplated that the employees would be required to work additional hours?

“A No.”

Q Do you recall that testimony, Mr. Reinohl?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q Do you recall this question and answer:

"Q To the contrary, was it assumed they would work the same number of hours as formerly, for the weekly salary?

"A Yes."

MR. KURZ: Now, if that is for the purpose of impeaching the present testimony of the witness, I think counsel should be confined to that point and not read the whole deposition page by page, and ask what occurred.

MR. DOWNING: I think all of this bears on the testimony which Mr. Reinohl gave here, which is not similar to that which is given on his deposition. He now recognizes the correctness of the testimony given on his deposition.

THE COURT: To what are you directing this inquiry? I do not get the significance of any very fatal difference in the testimony.

MR. DOWNING: The witness tried to give the impression, your Honor, that the employees were all notified when they got their raises that they were going to have to work longer hours. His testimony under deposition indicates the contrary. There was no contemplation that the employees, getting more money, would be required to work any more hours than formerly. That is quite different from his deposition.

THE COURT: He is testifying about notice now.

MR. DOWNING: At the particular point, he was testifying as to whether the employees were notified they would be required to work longer hours for the increase in pay.

THE COURT: I do not think it is particularly important.

MR. DOWNING: That is all.

REDIRECT EXAMINATION

BY MR. KURZ:

Q Mr. Reinohl, in connection with these questions that have just been asked you, was that increase in pay a voluntary increase made by the company?

A Yes, sir.

MR. DOWNING: Objected to, whether it was voluntary or not; it has no bearing on any issue in this case.

MR. KURZ: I think the company has the right, if it wants to, to pay more wages than the Wage and Hour law calls for. That isn't an act which prescribes a fixed rate of pay.

THE COURT: Go ahead. Overruled.

Q And in connection with that, I believe you stated a record was kept of the accumulated hours?

A Yes, sir.

Q What was the occasion for keeping such a record?

MR. DOWNING: Your Honor, I object to this. This

was all gone into day before yesterday with this witness.

MR. KURZ: Mr. Downing, I let you examine your witnesses and—

THE COURT: He is on cross examination.

MR. DOWNING: He is a witness for the defendants. This matter was inquired into—

THE COURT: It was all testimony you brought out.

MR. DOWNING: Yes, and counsel cross examined at great length on this same point; accumulated hours.

THE COURT: What was the question?

. . . The question was read.

THE COURT: Wasn't that gone into pretty thoroughly yesterday?

MR. KURZ: It may have been, Your Honor. I don't exactly recall on that point. I don't expect to pursue it further, except I want to show the reason for that accumulated hour provision was this very bulletin No. 4, which provides for that, which has been introduced here and is what we contend.

THE COURT: I will permit him to answer the question. Were you trying to comply with Bulletin No. 4? Was that the purpose?

A Yes, sir.

THE COURT: Did you think you were doing that?

A Yes, sir.

MR. KURZ: Q Were the employees advised at the

time that they would be required to work the additional hours compensated for, if the occasion should require it later on?

A Yes, sir.

Q On cross examination just now you stated that the payroll was made up on the schedule of hours shown on this schedule, Exhibit B. If the employees worked any overtime as shown by the time records kept of the various hours, how was that overtime compensated for?

A If they had no accumulated credit hours, they were paid for at the branches during that same week in which the overtime was worked, at the rate of time and half.

THE COURT: I think that was all gone into yesterday.

MR. KURZ: I wasn't sure your Honor understood it, and, it was again gone into on cross examination.

THE COURT: I think that was raked with a fine tooth comb yesterday, unless there is some distinction or difference that you desire to bring out.

MR. KURZ: The only thing I want to bring out is the inference from cross examination was that this was only an elaborate fixed schedule of hours, and if they worked any more than that, it didn't make any difference. We want to show if extra hours were worked, that extra time was paid for.

THE COURT: That is, over and above the scheduled hours.

MR. KURZ: That is, over and above the scheduled hours.

THE COURT: I think so.

MR. KURZ: Q Mr. Reinohl, you heard the testimony yesterday about certain employees at Southern Industries being asked by Mr. Brenner to pay a part of the wages in their envelope to someone else. Would any record of that appear in the record kept by you as auditor?

A None whatever.

Q In other words, you took the hours of work reported by Mr. Brenner and made your payroll according to that?

Q And the fact that a man was shown for more hours than he actually worked would not appear in the records in any way?

A No.

MR. DOWNING: Objected to. I do not see that this is material to the issue on Southern Industries.

THE COURT: Well, let it stand. It won't hurt anything.

MR. KURZ: That is all.

MR. DOWNING: I have no further cross.

(Witness excused)

MR. C. G. McGEHEE,
a witness on behalf of the defendants, having been
previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KURZ:

Q Mr. McGehee, as to Southern Industries Company, does the Southern Industries Company make any deliveries at all?

A No, sir.

Q Does it own any trucks?

A No, sir.

Q Does Southern Industries Company at any time since October 24, 1938, make any shipments out of the State, by rail or otherwise?

A No, sir.

Q Will you state the method of operation of Southern Industries Company and the receipt of its raw materials by it?

A Well, the Southern Industries Company buys its raw materials from Jacksonville Paper Company, and Jacksonville Paper Company have a lease on the warehouse that the Southern Industries Company occupies. Jacksonville Paper Company retains a portion of the space of that warehouse and maintains their employees out there and have them unload—Jacksonville Paper Company employees unload the merchandise as it arrives in the cars and it is placed on the siding and delivered into Southern Industries Company's portion of the warehouse. That is the warehouse that Southern Industries pay the rent on. Then when the merchandise is converted or manufactured, Southern Industries Company employees transfer this merchandise back into the portion of the warehouse on which the Jacksonville Paper Company pays the rent, and Jacksonville Paper Company employees ship it in cars, trucks and so forth.

Q How often do you go out to Southern Industries plant?

A Practically every afternoon.

Q Are you familiar in a general way with the character of work done by the employees at that place?

A Yes, sir.

Q Can you explain the way that the extra labor vouchers were handled at Southern Industries plant during the latter part of 1938 and during the early part of 1939?

MR. DOWNING: Objected to, your Honor, unless it is shown that this witness inspected the books and records. I believe on his examination as our witness he testified that those matters were under the supervision of Mr. M. R. McGehee and Mr. Reinohl; he knew nothing about it.

A I never said I didn't know anything about it. I said they were more familiar with it than I was. I never said I didn't know anything about any phase of that operation.

THE COURT: Objection overruled.

MR. KÜRZ: Read the question.

Q (Question read).

A The extra labor vouchers are principally for men who load and unload cars and load and unload trucks, because that isn't the regular employment. For that reason they have never been put on the regular payroll. Those vouchers are made out by the young man out there who is designated as shipping clerk and approved by him; and show the time and so forth, and the em-

ployee's name and other data, I believe, including Social Security number and whatnot. Then they are sent to the office and the money sent back out there and they are paid off. There are a few exceptions to that. For instance, when the Southern Industries employed a new employee, they would carry him without being put on the regular payroll for a week, to determine whether he had the ability to develop into an employee for the type of work they required.

Q Do you recall the testimony on yesterday regarding Sonata Aultman? Do you know what that employee was employed to do?

A He was in the bag plant; either in the machine operation or the bundling department. There's so many of them I can't recall at this time where all of them are placed.

Q Do you know whether or not that employee was used in connection with the moving of the plant during the time the plant was moved?

A About the first of September, 1939, we rented another building for more space and decided to move the plant and it was moved piecemeal because of the equipment involved. There are one hundred and twenty or one hundred and twenty-five machines, and various departments were closed down and those employees were given the privilege of working as extra labor in connection with the moving of the plant, and some of them worked as extra labor in connection with the moving of raw materials; some fourteen or fifteen hundred tons of paper and paper products that had to be transferred from one building to another, in addition to all the equipment. I think he took some—I think possibly from the time we started moving until we stopped, it took maybe ten weeks.

Q Were they also employed in making any changes in the building or any installations in the building?

A Several of them were, yes. After we got into the new building, there were a great many of them working for—I recall a fellow Bryan, and he had several assisting him in building shelving and tables and such things as are necessary in a plant of that character.

THE COURT: Were these employees doing their regular work in addition to that?

A Well, Judge, some of them worked a portion of a week regularly and then when the machine was closed down, you see, they would have been thrown out of employment during the transfer of equipment, and they asked whether they could get on extra labor and work extra labor while this was being transferred. We had to hire somebody. I told the Superintendent I didn't see any objection to giving them employment. I would rather give them employment than put them out.

MR. KURZ: Q Is that true of the employees, Brooks and Brown and Bryan and Courtney?

A No, this Courtney case, Mr. Kurz, is a different matter entirely, if I remember correctly. Mr. Thomas talked to me about Courtney. Courtney was an employee in the bag plant at the time this happened, and the bag plant was running, I think, then possibly forty-two or forty-four hours. I don't remember just the total, and they closed Friday at noon. But in unloading and loading this merchandise, that was done whenever the cars came in, whether it be Saturday or Sunday or any other time. So this fellow Courtney apparently, after the bag plant closed, he went around Saturday and sought employment from this loading or unloading man, who was some four hundred feet removed from the plant portion of the building, and it developed this man who was receiving and shipping clerk did not know who Courtney

was. He just came around and wanted gang work, and gave him a job and paid him extra labor. We didn't know anything about that until Reinohl developed it, and we jacked him up about it later. I didn't know Courtney ever worked there on Saturday.

Q You have referred to conversations with Mr. Thomas. Was that the conversation about which Mr. Thomas testified yesterday?

A Yes, sir.

Q With you?

A Yes, sir.

Q Was Mr. Brenner present at that time?

A Brenner came down, as I recall. Thomas talked to me one day and I called Brenner and told him to come down the next morning, and if I remember correctly—it's been sometime ago—Thomas met us at the office the next morning.

Q In that conversation did Mr. Thomas make any reference to the pay envelope switching that was testified about yesterday, under which one employee would receive more in his pay envelope and then turn it over to someone else?

A Yes, but not the employees that Thomas referred to yesterday.

Q Just what was the nature of that conversation, Mr. McGehee?

A Well, Thomas said that he had found that we had an old man out there by the name of J. T. Covington, who was making brooms, and that Covington was unable to make a sufficient number of brooms to earn

enough on the piece basis, which is the basis upon which all the broom makers work, to qualify under the Wage and Hour regulations, and that Brenner had been allowing the other broom makers, such young men who were capable of producing more brooms, to work and make some brooms and he was crediting those brooms to Covington, and then when the envelopes came out, in which Covington had received more money than he made brooms, Covington would pay these men for the brooms that Covington produced for his account. Brenner made that statement as a fact. There was never no mention of these day laborers. This Geohagan boy, the first time I heard about that was day before yesterday morning. They never were mentioned in the transaction at all. And to prove my statement, I told Brenner in the presence of Thomas if we had a man out there who was so old that he couldn't produce the required number of brooms under the Wage and Hour law, he would have to be dismissed, and our records do indicate that Covington was dismissed a week or ten days after that. He has never been put on the payroll since.

Q Mr. McGehee, when the plant of Southern Industries was set up on the forty-four hour schedule, do you recall when that was?

A You remember, Mr. Kurz, about September, 1938. I called you and told you our understanding was the Wage and Hour law was to become operative sometime in October or November; October, I believe.

Q October 24th.

A And gave you an outline of the set-up of Jacksonville Paper Company and its branches. I believe I went to your office and we discussed it quite awhile. And I likewise gave you an outline of the set-up on the operations of Southern Industries Company and told you that I would like for you to give me an opinion on the

status of those organizations, as to what they should do under the set-up. A few days after that I had a letter from you, I think probably about three pages. In the meantime we got a section of the law, which we read together, and your conclusion was that in view of the fact that the law stated that a producer of merchandise, even though not shipped in interstate commerce, if it came in competition with similar merchandise that was shipped in interstate commerce, that the producer of such merchandise, under the terms of this law, would have to comply, unless the Supreme Court or some other Court saw fit to enforce or amend or render a different opinion. And then, as to Jacksonville Paper Company, we read this law over and we found that it stated that an employee engaged in retailing or service organizations, a greater portion of whose business was intrastate—I lay emphasis on the intrastate to call to the attention of the gentleman, that an intrastate transaction is recognized—that that organization was exempt from the regulations of the Wage and Hour law.

So, after a considerable discussion, we decided, and I produced some evidence to show you that various departments of the Federal Government at Washington specified wholesalers, or classified wholesalers as service organizations. That it would be permissible to determine how much of our business, the distributing business of Jacksonville Paper Company, was interstate. So I had Mr. Reinohl prepare those figures. We selected months at random here, there and yonder, and I think we went over probably a year or eighteen months and determined the total business of Jacksonville Paper Company and its branches that was in interstate, and it was a value of less than seven per cent.

So, after further discussion with you, we concluded the language of the law as I have just recited, meant what it said and not what some interpreter might put on it, and which says the Jacksonville Paper Company

and the distributing organizations were exempt from the law.

Further, I happen to be on the board of one of the largest banks in the country, perhaps, and I know the banks did not go under the Wage and Hour law until either January or February, 1940, and the reason they did not go under it was they waited for a ruling from the administrator and he finally ruled about January, 1940, that national banks were subject to the Wage and Hour law and they were under it.

If there has ever been a ruling from the Wage and Hour Department at Washington to this day definitely stating that wholesalers or distributing organizations were under the law, I have no knowledge of it.

Q Mr. McGehee, when did the Southern Industries then go on the forty-four hour schedule?

A After this discussion at your office, I went to the plant and instructed Mr. Reinohl and Mr. M. R. McGehee that on the 24th or 28th of October—what was the date it became effective? Anyway, the effective date, we would go under the Wage and Hour schedule as far as Southern Industries was concerned. I went to the Superintendent of each department out there and said, "You have been operating forty-nine hours a week, five days, nine hours a day, and four hours on Saturday. Effective next week you will run nine hours, four hours—you will run nine hours, four days per week, and eight hours on Friday, and you will so designate that in your time book on each man, and show the number of hours he works each day."

Q Did the plant then shut down operations after that period of hours?

A I was going to tell you. I came back and spoke to the Accounting Department, and about the first of

December, about four weeks later, I learned the superintendents out there had gotten the idea they were to run five days of nine hours each rather than four days of nine hours each, and eight hours on Friday. They were running five days, nine hours each, which meant forty-five hours, instead of forty-four hours. As soon as I detected that, which I think was four weeks—about the first of December, after the Act became operative, that plant went under the Wage and Hour law, forty-four hours a week, and reduced it to forty-two and later to forty, and it has been run as closely under the Wage and Hour provisions prescribed by the law as any plant in the United States since that time.

Q There was some testimony in connection with the pay of pieceworkers, that they were required to pay eight cents per hour to the company. Will you state what that is?

A That is a misnomer, Mr. Kurz. They didn't pay the company anything. The pieceworkers, all the broom men and men working in the coathanger department on piecework, particularly the broom men—that doesn't apply to the coathanger men; they work at a machine, and broom making is one industry that has not progressed in the last seventy-five years. About sixty per cent of the cost of a broom is labor. These men work at a machine and it is largely a hand operation. These helpers or corn sorters, as you heard them say yesterday, corn sorters, they sort this corn out and these broom makers made a deal with the company that they would pay these men eight cents per hour to bring this corn to them and put their own packs before the machine, rather than to quit and go after it themselves. That eight cents per hour was deducted from the broom makers' earnings per week, and paid the boys or men who worked to supply this corn and did other duties.

Q Do you mean by that, these sorters received eight cents an hour?

A They received that in addition to their own salary; or, in other words, they received so much per hour, but this eight cents was in addition—was included in it. These broom makers—

THE COURT: Did each man have a separate helper, or one man have three or four?

A Well, Judge, I don't think they had any segregation about it. Whenever a man's pack, or rack was empty, whoever was available filled up his rack for him.

MR. KURZ: Q There was no separate helper assigned to each broom maker?

A No. Those broom makers all worked on piecework basis, or dozen brooms, and the company did not exercise any control over them. They worked if they felt like it and if they didn't, they sat down and smoked and told yarns.

Q If I understand you, then, the company simply told them, "Here is the machine," and employed them to make brooms on piecework?

A That is correct. Whatever they made, we paid them for.

Q There was some testimony about freight allowance made by manufacturers to their distributors for shipments to territory in which other distributors might have an exclusive right. Are you familiar with that practice in the paper business?

A Yes, sir.

Q What is that practice?

A Well, the mills, Mr. Kurz, have published in their mill data books that they supply distributors some information on what they call drop shipments. A drop

shipment means one that by-passes the distributor's warehouse. They will allow freight only to the distributor's warehouse, but that has not been observed, and I can cite many instances where they allowed the full freight. We sold a car to Royston, Georgia, which is naturally in Atlanta territory, sixty miles east of Atlanta, and freight was allowed from where we bought the paper. We quite frequently sell paper to Columbus, Georgia. The Government has an army camp up there. We sell paper to the army camp up there, and we stop the car at the army camp, unload the paper that we sell there, and the car moves on to some of our warehouses, or some customer. Just recently we sold fifteen thousand pounds of paper to an army camp at Tulahoma, Tennessee. We had the car originate at Crossett, Arkansas, or Elizabeth, Louisiana, and routed through Tulahoma, and the Government took out fifteen thousand pounds of paper and delivered it at Tulahoma, and the car passed on to some other destination.

Q Mr. McGehee, coming back to Southern Industries for a moment, who are the men in charge of the various departments out there and what are their duties?

A L. L. Parrisy is Superintendent of the bag plant. Rubin Johnson is the assistant, designated as chief machine adjuster, and he likewise superintends the plant when Parrisy is out of town, and in many instances he superintended operations when we ran a double shift. For instance, day and night shift. He would run the night shift and Parrisy the day shift, or vice versa, whatever suited their convenience.

C. C. Cantrell is superintendent of the tablet plant. Dempsey Revel is superintendent of the envelope plant, and he has an assistant, Eddie Klehm, and we operate the envelope plant sixteen hours a day. One of them operates eight hours and another section eight hours. I think one month one works at night and the other month the other one works at night, and so forth.

Q During the time they are in charge of that particular department?

A Yes, sir. Wilberding is superintendent of the box plant. I don't recall his initials. He has an assistant, Foss. Foss is in the hospital right now. He was in an automobile wreck and lost a leg, but he is still assistant, I suppose. The coathanger department is under the supervision of Walter Mathis. We operate that twenty-four hours per day. He has men who operate the other shift. The machine shop is under the supervision of Slocum. I don't recall his two assistants, but they work together, under his supervision. The broom department is under the supervision of William Geohagan. He is superintendent.

Q Are these men on a weekly salary?

A Yes.

Q Do you recall how much each one of them gets?

A Approximately, Mr. Kurz. I might miss it a little bit. Parrisy's salary is around sixty dollars a week. He is in the bag plant. Rubin Johnson is thirty-five, I believe. Cantrell, in the tablet plant, is forty-five; I am not positive which. Dempsey Revel and Klehm, who operate the envelope plant, have thirty dollars per week each, and they get so much per thousand for production, which figures about thirty-five or thirty-six dollars each per week. Wilberding, in the box plant, gets thirty-five dollars per week. Walter Mathis, in the coathanger plant, gets thirty dollars and there is a probability that he gets something on the production of coathangers per thousand; I am not positive about him. It seems to me he gets one cent per thousand in addition to his salary, but I might be wrong. William Geohagan gets thirty dollars per week and so much per dozen brooms, which runs from thirty-four to thirty-five dollars a week. We have that bonus plan to help production. The more they make the more money they get.

Q Mr. McGehee, in regard to the business done at the various branches, Miami and the other branches about which there was testimony concerning the percentage of the total business done by Jacksonville Paper Company: Are you familiar with that territory?

A Yes, sir.

Q In addition to the paper houses, does any other type of wholesaler handle paper products?

A Yes. Those figures Mr. Wheeler gave are about seventy-five per cent correct. Paper products in this territory are sold by wholesale groceries, and so-called cash and carry houses. They sell everything and are about the worst competition in the whole trading area. They sell under, on the wrapping papers—they don't get into the printing papers—somewhere between fifteen and twenty-five per cent.

Q Where do they obtain their supply?

A Why, some of it, they buy from various places. They buy from the manufacturers of paper bags. The paper bag is one of the items they carry quite extensively. They buy from the mills that manufacture book paper. Quite a competitor of book paper again. They buy what is known as lard or butter trays; wrapping twine, they are quite a competitor. They handle a considerable volume of imitation parchment paper, which is used for wrapping meats and vegetables and grease items; lard and butter and meat, and things of that kind. And they sell quite a few glassine bags. They sell quite a few bags known as display bags, with a window in it. They sell quite a bit of soda straws and drinking cups. In fact, there isn't very much in the coarse paper line that these fellows don't carry. I understand from Mr. Wheeler that he had paper houses only. Well, what I said here was, he was seventy-five per cent correct in his figures; as

far as paper houses are concerned, I think he is correct, as far as it goes.

MR. KURZ: That is all. You may inquire.

A Mr. Kurz, just a moment; please. I have a statement I would like to make for the record, if the Court will permit it.

MR. DOWNING: Just go on talking.

MR. KURZ: That is all.

CROSS EXAMINATION

BY MR. DOWNING:

Q Mr. McGehee, you spend a great deal of time at the Southern Industries plant?

A Yes, sir.

Q Did you spend a great deal of time before it was moved to its present location?

A Yes, sir.

Q I believe you said the plant was moved piecemeal. About how long a total period of time was it those moving operations were going on?

A I think the records will disclose. I said some eight or ten weeks.

Q Were you present during all that time?

A I was there practically every day; some portion of each day.

Q Did you assist the men in moving the plant?

A I actually helped put some paper in cars, yes.

Q Did you assist Sonata Aultman, who worked the five hours you testified about?

A I can't say as to that. There were plenty of them helping.

Q Do you recall the particular five hours that you testified Sonata Aultman worked in moving?

A No, but it's shown on our records he worked moving. When you have a hundred and thirty-five people working there, I don't know every time a man touches a machine.

Q Were you present during that five hours or not?

A I don't know whether I was present during that five hours or not, but I was there most of the time.

Q During the ten weeks?

A Every day.

Q Did part of the moving take place at night?

A I think that it did take place at night; I am not positive. I didn't stay on at night.

Q You did not stay on at night?

A No, sir.

Q You described quite in detail the set-up in the shipping department out there. You described the arrangement by which the Jacksonville Paper Company leases one side in the plant and put its employees in there, and the Southern Industries brings the goods into that particular segment, and the goods are shipped

out from there by the Jacksonville Paper Company employees, I believe?

A I didn't say Jacksonville Paper Company leased part of it. They leased it all and sub-leased it to Southern Industries.

Q They retained a particular portion?

A That is correct.

Q And they now have their employees in that particular room or portion and they, themselves, ship the goods out?

A That is correct.

Q Do they make shipments direct from the plant to out of state customers?

A Who?

Q The Jacksonville Paper Company employees, stationed at the plant.

A Yes, they make shipments direct to the branches, and out of state customers.

Q Was not that arrangement put into effect on July 1, 1940?

A About that time, yes, sir.

Q Before that time, the employees in the shipping room were employees of Southern Industries?

A Yes, sir.

Q And the shipments were made direct from the plant, out of the state?

A For the account of Jacksonville Paper Company and in the name of Jacksonville Paper Company; not Southern Industries.

Q Were the shipments prepared by the employees?

A Yes, sir.

Q Were you present on the occasion of the Saturday morning or Saturday afternoon that Courtney came down and asked for additional work?

A No, sir.

Q Is that just your surmise?

A No, sir, we just investigated that through the proper channels and developed that.

Q You say "we investigated it". Did you undertake the investigation?

A I had it investigated, yes, sir.

Q You did not investigate, yourself?

A No, I don't think I did.

Q You were relying on the reports of your investigators?

A Yes, sir. I can rely on my own personnel in my own organization. I rely on them for many, many things.

Q You have indicated that on or about October 24, 1938, the Southern Industries plant began a program of compliance with the Act?

A Yes.

Q What about the pieceworkers, Mr. McGehee?

A Well, Mr. Downing, before this thing became operative, we made a diligent search of this town to find if there was anybody that could give us assistance, and we found the president had not appointed an administrator and the office was not opened up until nine months after it became operative, and the only thing we could rely on was the advice of counsel.

Q You got his advice?

A Yes.

Q Was that represented by letter that was introduced in evidence as Southern Industries' Exhibit No. 1?

A There wasn't anybody connected with the Federal Government, in any way down here, that knew anything about it for nine months afterwards.

Q Was this the letter you were relying on, Exhibit No. 1, Southern Industries?

A Well, after this letter, Mr. Downing, I discussed this thing with Mr. Kurz and told him he was not apprised of all the facts and did not understand it. You will notice he states here "in as much as they use machinery and equipment, and as we understand that you do require them to work for a given number of hours or produce a given number of manufactured products, in order to keep your machinery employed"—we don't do that, and I explained that to him, and due to that fact that we are not subject to the Wage and Hour law.

Q When did you tell him that?

A After I got his letter.

Q When was that?

A I think the next day.

Q Did you continue to employ your pieceworkers after that time for hours over forty-four and pay them only straight time?

A We didn't pay them straight time, but paid them for what they made. But when Thomas made this investigation—

Q I—pardon me.

A You asked the question and I will answer. I told him these men out there took rests and all; did what they pleased, when they wanted to rest. He said the law provides for a condition of that kind. He didn't say the law, he said the department has a ruling. You know, this as a new adjunct to our American system. We are under rulings and opinions, not laws. He says a ruling has come out that rest periods are provided for. I said, "Where is it?" He says, "I am not familiar with it." I says, "I will write a letter to the department in your presence and ask that they acknowledge it and tell us how to set those things up."

Q Did they do that?

A Yes.

Q You got an answer approving the schedule of rest periods you asked for?

A And ten days after that I got another letter from another department saying the man who gave me that had not authority to do it, and it was withdrawn. I wrote him and asked what I should do, and he didn't know.

Q Do you have rest periods out there?

A Yes. We rest them three times, under instructions, or some ruling from the department.

Q Had that been approved?

A I don't think so. I don't think you can do anything out there with the department's approval.

Q But you put in a regular schedule of rest periods and the men simply leave the machines and go at irregular intervals?

A Any way they want to. I have been there when there were five standing in the corner, smoking cigarettes, and they talked twenty-five minutes, but that was in the broom department and nobody paid attention to it. I don't mean the day labor. If the broom makers don't work, they don't cost us anything.

Q I would like to ask you about the corn sorters and the way they were paid. I understood you to say in addition to the eight cents an hours that they got from the broom makers, the company also paid them some money?

A Yes, sir.

Q What did they do besides sort the corn for the broom makers?

A They sorted broom corn for all broom makers and cleaned up the floor and provided the handles, and some of them trimmed brooms and some of them cut part of the twine off, after they are sewed, and some cut the ragged part off the end, after they are sewed. And another fellow puts handles on them and bundles them up. And they do whatever is required in the broom manufacturing plant.

Q How much time was spent sort corn for broom makers, and how much time—?

A I don't know.

Q I thought you were there.

A I don't stand over them and watch them. I had one hundred and thirty-five others to watch as well.

Q Well, what salary did the company pay them?

A It is available on the payroll there, every dime of it. The amount reflected on the payroll includes this seven or eight cents the broom makers contributed.

Q How many broom makers did a sorter work for?

A Worked for all the plant.

Q Isn't it usually customary to allot one sorter to three broom makers?

A I don't think so. I never knew of it if we did.

Q The three broom makers, at eight cents an hour, equals twenty-four cents an hour, which you paid to the corn sorters?

A No, sir, because corn sorters did a lot of other things besides that. As a matter of fact, for a long time we didn't have but three broom makers.

Q What does that twenty-four cents indicate on the record, for corn sorters?

A That indicates the man was paid twenty-four cents an hour for all he did.

Q By whom?

A Jacksonville Paper Company or Southern Industries.

Q What became of the money the broom makers donated?

A That was deducted from the broom makers' salary—

Q Who was it paid to?

A That was deducted from the broom makers' salary in the preparation of the payroll and added to the—this fellow; this day laborer.

Q Then the twenty-four cents an hour set up on your books includes eight cents an hour which the broom sorter got from the broom maker?

A That's right. I said that in the beginning.

A And if one particular corn sorter worked for three broom makers, the company would be paying the corn sorter nothing?

A It never was set up where a man worked for three. As I told you, I think there were about ten or twelve of these day laborers, we call them, out there, and for a long time we had four broom makers. On your theory you would have three men to one broom maker, instead of one man to each three broom makers.

Q Three men to each broom maker?

A I said on your theory we would have three men to each broom maker.

Q You recall the testimony of Mr. W. T. Geohagan? I believe he was foreman of your broom department out there after Mr. Brenner's death.

A Yes, sir.

Q Do you recall his testimony, that he had no corn sorter help, he had to get—?

A No, I don't recall that. If he did, he lied. I don't recall any broom maker that got his own corn.

Q You do not think he was telling the truth?

A No, I don't think about it. I know he wasn't. I don't recall him saying that.

Q On these drop shipments that you described as passing through the army camp and going to a certain point: It went through a certain camp and fifteen thousand pounds was taken off and it went on somewhere else. Where did it go to?

A I don't know.

Q One of your branches?

A Most likely one of the warehouses, yes.

Q Now, the question of allowances of freight on these drop shipments: Do I understand it is customary, say on a carload shipment from an out of state manufacturer to the Tampa branch, that the mill will allow you the freight to Tampa?

A Oh, yes. The mill will allow you freight on paper anywhere.

Q That also would apply to shipments, carload shipments, to Miami, West Palm Beach, Orlando and Pensacola?

A Yes. We have a competitor that ships carloads to our customers down there occasionally at Miami.

Q As those cars pass through Jacksonville, do you ever stop any of them here?

A Our competitor's cars?

Q No.

A Oh, yes, quite frequently.

Q Do you keep the entire shipment here?

A No, part of it goes to some other destination.

Q It never happens that you stop an Orlando car here?

A It may happen and we may truck it there.

Q Does that happen with goods that were printed up for other branches?

A We have cars that come in—I think right now, on butcher paper, that we will order a car of merchandise and have the destination as West Palm Beach. That is Crossett Paper Company. They label it, and then we will stop it at Jacksonville, and we unload part and the other goes to West Palm Beach.

Q In that case do you recoup the difference?

A No, the railroad gets the freight clear through.

Q Suppose the entire car is unloaded here?

A If the entire car is unloaded here, the mill pays the freight to Jacksonville.

Q I was speaking when the car was billed to another branch.

A We probably do that sometimes. We have three very large trucks that hold twenty-four thousand pounds apiece. We stop them and split them up with our trucks.

Q In that case do you recoup the freight charges on to the branches?

A Yes.

MR. DOWNING: That is all.

MR. KURZ: That is all.

(Witness excused)

MR. KURZ: The defendant now offers in evidence the deposition of Ernest H. Adkins, taken at Tampa, Florida; page 185 of the depositions on file.

Also the deposition of T. H. Thigpen at Tallahassee, Florida, with reference to the re-employment, and the schedules.

MR. DOWNING: Objected to as immaterial and irrelevant in view of the said branches on which coverage is conceded. I do not understand that is an issue.

MR. KURZ: This is for the explanation of a method of handling. There was quite a bit of testimony produced by the plaintiff on that line.

MR. DOWNING: This is one of the branches on which coverage has been conceded and violations—

THE COURT: You were introducing that part that related to what?

MR. KURZ: This change of employment, April 27, 1940. That plan was only put in effect in the branches in which coverage was conceded. We never applied it to any other branches. It is simply in further explanation, and inasmuch as it is shown, and the deposition has already been taken—

MR. DOWNING: We offered a number of depositions from those branches this morning and your Honor excluded them, but permitted them as a proffer. It is

satisfactory to us for a similar ruling to be made on the remaining depositions at Tallahassee.

THE COURT: I will receive it as merely explanatory. It is not conclusive. I will receive them on that theory.

MR. KURZ: The defendants rest.

THE COURT: The decision will be reserved pending the submission of briefs.

Thirty days for the plaintiff, thirty days thereafter to the defendants, and fourteen days to reply.

... And thereupon Court adjourned.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

CLIFFORD G. McGEHEE et al,
co-partners doing business as
SOUTHERN INDUSTRIES, and
JACKSONVILLE PAPER COMPANY,
a corporation,

Defendants.

Civil Action
File No. 209-J

DEPOSITIONS

I, Ted Mack, a Commissioner and an officer authorized by law to administer oaths, do certify that, pursuant to Stipulation of the above parties by their counsel, filed

on January —, 1941, I did on February 5th, 1941 at nine o'clock A. M., in room 310, of the Post Office Building, in Tampa, Florida, proceed to take the depositions of J. B. BROWN, LEE PARKER, WILLIE BROOKS, VAN MASSEY, FRED RAWLS, J. H. STORM, JR., MRS. H. A. TEN EYCK, EARNEST H. ATKINS, MRS. FRED L. LEWIS, and JAMES WILFORD, the witnesses named in said Stipulation, who, after being by me first duly sworn, testified as hereinafter set forth; said testimony being upon oral examination, being transcribed by me and reduced to writing by me pursuant to said Stipulation.

There were present Mr. Louis Kurz, attorney for defendants, and Mr. George Downing, attorney for plaintiff.

. . .

RE CROSS EXAMINATION

By Mr. Kurz

. . .

DEPOSITION OF LEE PARKER

THEREUPON, LEE PARKER, produced and sworn as a material witness on behalf of the plaintiff; deposed and testified as follows:

DIRECT EXAMINATION

By Mr. Downing

Q Please state your name.

A Lee Parker.

Q Do you have any middle initial, Mr. Parker.

A Lee W. Parker.

Q Where do you live, Mr. Parker?

A 208 East Broad.

Q Tampa, Florida?

A Yes.

Q By whom are you employed?

A The Tampa Paper Company.

Q Is that a branch of the Jacksonville Paper Company?

A Yes.

Q How long have you been employed by the Jacksonville Paper—I mean the Tampa Paper Company?

A This August will be three years.

Q You were first employed in August of 1938?

A Well, I started working, yes Sir.

Q In what capacity were you originally employed?

A Truck driver.

Q At what salary were you originally employed?

A \$14.

Q A week?

A Yes, Sir.

Q What were your regular hours of work at the time of your first employment?

A At that time we went to work at quarter after 7:00 and got off supposedly anywhere from 6:00 to 6:30.

Q How much time did you take for lunch?

A One hour.

Q Did you regularly leave work at 6:15 to 6:30?

A No, Sir, we did not.

Q What was your average time for leaving work? If you can't state an average, state the latest time you got off.

A 10:30.

Q How often would you work as late as 10:30?

A Quite often.

Q How many times a week, on the average?

A On an average of one and two, sometimes three.

Q Three nights a week?

A Yes, Sir.

Q When you worked late at night was it customary for you to take a supper hour, or any time off for supper?

A What do you mean by "any time off"?

Q To eat dinner. Was it customary, when you worked the long hours in the evening, to take time off for dinner?

A Sometimes we did, sometimes we didn't. We have worked as late as 9:30 and 10:00 without any supper at all.

Q Did you work a full day on Saturday?

A Yes, Sir, not all of them. But as a general rule we do.

Q What was your regular closing time on Saturday?

A There wasn't any. What I mean by that—just when we got through. If it was 5:30 and we got through, we were loose then! if it was 6:00 or 6:30 and we got through, we went home.

Q What's the earliest you've gotten off on Saturday?

A Around 3:00.

Q What's the latest you've gotten off on Saturday?

A Around 7:30.

Q What's your average time for getting off on Saturdays?

A Anywhere from 6:00 to 6:30.

Q Was any change made in your salary on October 24, 1938, or about that date?

A No, Sir.

Q Was any change in your schedule on or about October 24, 1938?

A No, Sir.

Q How long did you continue to receive \$14 a week?

A Up till just a short while ago.

Q How long ago?

A I believe it was in November sometime.

Q Of 1940?

A Yes, Sir.

Q What are you making now?

A \$15.

Q \$15 a week?

A Yes, Sir.

Q Were you raised to that amount in November, 1940?

A Yes, Sir.

Q Do you remember approximately what time in November you received that raise?

A It was around the 8th, I believe.

Q Around the 8th of November?

A Yes.

Q On October 24, 1939, was any change made in your schedule of hours worked?

A No, Sir.

Q Was any change made in your hours of work on or about October 24, 1940?

A No, Sir.

Q Are you still continuing to work, generally, the same hours which you have previously outlined?

A Yes, Sir.

Q Do you receive the same amount of salary each week regardless of the number of hours worked?

A Yes, Sir.

Q Do you know the occasion for your raise in November?

A Do I know why?

Q The occasion for your raise in November, 1940?

A No, Sir.

Q What is your job at the present time, Mr. Parker?

A At the present time I'm a little of it all—paper cutter and warehouse man.

Q Which department do you work in?

A Fine Paper.

Q Were your duties changed in November when you got your raise?

A I can't hardly answer that. It's yes and no. I had advancements. One fellow went in the office and it's been jumped back and to a couple of times. We haven't had a regular man back there.

Q Who is the man who was changed?

A Fred Rawls. Since then they haven't had a regular man back there with me.

Q Is there anyone in the Fine Paper Department who is carried as Shipping Clerk.

A At the present I'm doing some fine paper shipping too.

Q Do you act as Shipping Clerk of the Fine Paper Department?

A I write out the bills of lading and see that they get on the truck.

Q Do you check in the incoming goods for the Fine Paper Department?

A Very seldom.

Q Who does that?

A Fred Rawls, or Brownie.

Q That's J. B. Brown?

A Yes.

Q Is he connected with the Fine Paper Department?

A No, he's not.

Q Does he ever perform any duties in connection with the Fine Paper Department?

A Once in a while when we get in a tight he'll come over and help us.

Q What does he do?

A He unloads floats for us.

Q Do any of the employees of the Fine Paper Department ever assist in the Coarse Paper Department?

A Very seldom—they do and they don't.

Q Do you?

A Yes, Sir.

Q What do you do?

A Usually I load a truck out.

Q Generally, is there a pretty clear-cut division-line between the two departments?

A There seems to be. Yes, Sir.

Q Do I understand that when you were first employed in 1938 it was in the capacity of a truck driver?

A Yes, Sir.

Q How long did you continue as a truck driver?

A Around a year and three months.

Q How were your duties changed then?

A I came on the inside as a warehouse man.

Q Have you remained in the warehouse ever since?

A Yes, Sir.

Q Have your duties since that time generally been the same?

A Well, I cut more paper than I did.

Q How long have you been cutting a larger proportion of paper?

A Approximately three months.

Q Mr. Parker, tell us what the chief items are that are handled in the Fine Paper Department?

A Well, inks of all descriptions and all colors, and papers, book paper, bond paper.

Q Any news print?

A Yes, Sir.

Q What other items?

A Envelopes, chip board.

Q Is chip board handled in the Fine Paper Department or the Coarse Paper Department?

A Fine Paper Department.

Q Any other items?

A Envelopes, tags, shipping tags, and tag wires, strings—

Q Twine?

A 12 inch strings, and mimeographing.

Q Are there any kind of specialty items handled in the Fine Paper Department?

A Do you mean do they specialize in anything?

Q Are there any specialty lines, as, for example, paper cups?

A That's in the Coarse Paper Department.

Q Are the items which you have mentioned the chief items handled in the Fine Paper Department?

A Yes.

Q Do you know, generally, which of them are received from the Jacksonville Paper Company at Jacksonville?

A That I couldn't say.

Q Do you know which of them are manufactured by Southern Industries Company in Jacksonville?

A Envelopes.

Q Are all of the envelopes distributed through the Tampa branch manufactured by Southern Industries?

A All that I know of, yes Sir, unless they happen to be mill orders or something.

Q What is a mill order?

A That's an item that the Jacksonville Paper Company doesn't stock and some other mill does. It would probably come to Jacksonville and then to us. How they work that I don't know.

Q Will you describe to us how the goods handled by the Fine Paper Department are received, that is, by what means of transportation they arrive?

A From Jacksonville, or anywhere.

Q From any source.

A We have them come in by boat and rail and Jacksonville Paper Company truck, and we have these other truck lines that bring them in from Jacksonville.

Q Are there any shipments received from Jacksonville by boat?

A I don't believe so.

Q Are there any shipments received from Jacksonville by rail?

A Yes, Sir.

Q In carload lots or less than carload lots?

A All I know of are part cars. Jacksonville will take part and send the rest to us.

Q Do I understand that you mean part of a car that had been shipped to Jacksonville direct by the manufacturers

A Yes, Sir. They would take part and give us part, but we have had full carloads come in on rail but not from Jacksonville that I know of. It's possible, but not that I know of.

Q Do you receive shipments direct from manufacturers and jobbers in the Fine Paper Department?

A I don't quite understand you.

Q I have understood from your testimony that you don't get all of your goods through the Jacksonville office. Were there any shipments received direct from the manufacturers?

A Yes, Sir.

Q How are such shipments made ?

A Some by boat, some by rail.

Q Do you know of any such manufacturers located within the State of Florida?

A No, Sir.

Q Can you state roughly what portion of the goods dealt in here at Tampa are received direct from manufacturers? In the Fine Paper Department?

A Half of it.

Q Does that include the pool car shipments? That are received in conjunction with Jacksonville?

A Yes.

Q You are considering that as a shipment direct from the manufacturer?

A No, I wasn't.

Q Then does your estimate that 50% of the goods dealt in in the Fine Paper Department are received direct from manufacturers and jobbers, exclude less than carload lots which have been transmitted here by Jacksonville?

A Yes.

Q How often do you get a pool car shipment of that type?

A It's hard to say. There's no certain time. Approximately one about every six months.

Q No oftener than that?

A No.

Q What are the types of items usually received in those pool car shipments?

A I believe mostly book paper.

Q Do you recall receiving any shipments from Logan, Swift & Brigham?

A Yes.

Q What do you receive from them?

A Inks.

Q Anything else?

A I think it's envelopes we get from those people. Not ink.

Q Are those items generally shipped direct to the Tampa branch by that manufacturer?

A Yes, Sir.

Q Do you get anything from the St. Moritz Valley Company of Montreal, Canada?

A Yes.

Q What do you get from them?

A News print.

Q Are those shipments made direct to the Tampa branch by the manufacturer?

A Yes, Sir.

Q How is shipment made?

A By boat.

Q By what steamship line does the shipment come to Tampa?

A It has come in by two different ones, but the one it came in the most was the Clyde Mallory.

Q The goods received from Logan, Swift & Brigham, by what means of transportation are such goods received?

A I believe it's by boat.

Q Do you know how frequently such goods are received from that company?

A No, Sir. I don't know that.

Q Does the Fine Paper Department receive any goods from the Parker Young Company?

A Yes.

Q What do you receive from the Parker Young Company?

A Scribe bond.

Q What is scribe bond?

A It's just a fair grade of sheet bond paper. It isn't watermarked or anything.

Q Is it printing paper?

A Yes, Sir.

Q The shipments from the Parker Young Company made direct to the Tampa Company?

A Yes, Sir.

Q Do you know where that company is located?

A No, Sir, I don't.

Q Do you know whether it's in the State of Florida?

A I do not.

Q By what means of transportation are shipments received from Parker Young?

A By boat.

Q How frequently, if you know?

A Approximately every three months.

Q Does the Fine Paper Department receive any goods from the American Paper Goods Company, of Kensington, Conn.?

A Yes.

Q What items?

A Cover paper, book cover paper.

Q What kind?

A Envelopes and cards.

Q Are such shipments made direct to the Tampa Paper Company?

A Yes.

Q How frequently?

A About every two months.

Q By what means of transportation are they received in Tampa?

A Boat line.

Q Which line, if you know?

A Clyde Mallory.

Q Does the Fine Paper Department receive any goods from the Baltimore Sales Book Company?

A Not that I know of.

Q Does it receive any goods from the Calcasieu Sulphate Paper Company?

A Is that in Michigan?

Q That? Not as far as I know.

A The Nekoosa-Edwards Company, we receive goods from them.

Q Do you recall any shipments from the Calcasieu Sulphate Paper Company?

A Not in the Fine Paper.

Q Just to speed things up, if you don't know, say you don't know. Just answer the question "no". Do you receive anything from the Champion Fibre Company?

A Yes.

Q What do you get from them?

A Scribe bond.

Q What else?

A Ledger paper.

Q Anything else?

A No, Sir.

Q Is that company located in Florida, if you know?

A No, Sir.

Q Where is it, if you know?

A I don't know.

Q Are shipments from it made direct to the Tampa Paper Company?

A Yes, Sir.

Q How frequently are such shipments received?

A Approximately every three months.

Q By what means of transportation?

A Clyde Mallory.

Q Do you receive anything from the Eastern Corporation?

A Yes.

Q What?

A Bond—ledger paper.

Q Are those shipments made direct to the Tampa branch by the manufacturer?

A Yes.

Q Do you know where it's located?

A No, Sir.

Q Do you know whether its' located in Florida?

A It is not.

Q Do you receive anything from the Mark-Edwards Company?

A I don't know.

Q Did you receive anything from the Ennis Tag Company—or the Ennis Tag & Paper Company?

A We got tags, but from what company I don't know.

Q You mentioned the Nekoosa-Edwards Company a while ago. What did you receive from it?

A Mimeograph.

Q Paper?

A Yes.

Q What else?

A We get duplicator bond and mimeograph.

Q Do you receive direct shipments from the Nekoosa-Edwards Paper Company?

A Yes.

Q Do you know from what point?

A Wisconsin, I think.

Q By what means of transportation are shipments from that company received?

A By boat.

Q Which line?

A Bull Line—Bull Steamship Line.

Q Do you get anything by rail from it?

A Not that I know of.

Q How frequently do you get shipments from that company?

A About every three months. Some of our shipments of that stuff that you called comes in from Jacksonville too, that is, it's transferred down here.

Q In a pool car?

A No, Sir. Just when we run short, they order it and they ship it down here.

Q Do you get anything from the Keyes-Fibre Company?

A I don't know.

Q How about Crossett? The Crossett Paper Company?

A I don't know.

Q In the Fine Paper Department do you ever receive direct shipments from manufacturers in the manufacturer's own truck?

A Only from the Jacksonville Paper Company.

Q Are they the products of the Southern Industries?

A Yes.

Q Do you know, roughly, what proportion of the goods handled in Tampa are the products of the Southern Industries Company?

A That's in the Fine Paper?

Q Yes.

A That's manufactured there?

Q Yes.

A I think a third would take care of it.

Q Now you said a while ago that at least 50% of the goods distributed through Tampa are received direct.

from manufacturers and jobbers. That leaves a small percentage not accounted for. I believe you have stated also that you didn't include in the 50% the pool car shipments received through Jacksonville.

A Yes.

Q Would that make up the balance?

MR. KURZ: Objected to, on the ground that it is leading.

Q Will you state whether that makes up the balance?

A Yes, Sir.

Q Are there any other sources from which the Tampa branch receives merchandise other than from Jacksonville and by direct shipment from manufacturers and jobbers?

A We receive it by rail.

Q From what source?

The question was thereupon read to the witness, at the request of counsel.

A Well, express.

Q I'm not asking about the means of transportation, the method of transportation by which they are received. You've gone into that. But other than shipments from Jacksonville and from manufacturers and jobbers, are there any other sources from which the Tampa branch received merchandise for distribution?

A Not that I know of.

Q Do you receive transfers of merchandise from other company branches other than Jacksonville?

A Yes, Sir.

Q What branches?

A The Lakeland Paper Company.

Q Any others?

A Not that I know of.

Q Do you recall any transfers from out of state branches to Tampa?

A No, Sir.

Q Do you recall whether the Tampa branch has made transfers of portions of its own stock to other branches other than Lakeland and St. Petersburg?

A Yes, Sir.

Q Which ones?

A The Partin Paper Company, at Mobile.

Q How were such transfers made?

A By boat.

Q Were they fine paper items, or coarse paper items?

A Fine paper items.

Q How many such transfers do you recall?

A Three.

Q When were they made, if you know?

A We made one approximately four months ago.

Q Is that the last one?

A Yes, Sir.

Q When were the others made?

A The previous times before those, I couldn't tell you very much about that. I remember them all right.

Q Do you know whether they were since October 24, 1938?

MR. KURZ: Objected to, because the witness has already stated he didn't know.

A I believe they were.

Q By what steamship line were they shipped?

A Either the Pan-Atlantic or Clyde Mallory. I don't know definitely which one.

Q Do you know of any transfers from Mobile to Tampa??

A I don't know of any.

Q Do you know of any instances where the Tampa branch has filled orders for customers of other branches?

A Yes, Sir.

Q What branches?

A We filled them with Jacksonville Paper.

Q Where were the customers located?

A Kissimmee.

Q Do you recall whether the Tampa branch has filled orders for out of state customers of other branches?

A No, Sir.

Q Do you know of any shipments to out of state points other than the transfers to Mobile about which you have testified?

A I don't.

Q Who keeps track of the stock in the Fine Paper Department?

A Fred Rawls.

Q Does he prepare the order or requisition for new supplies?

A He prepares the requisitions for the stock.

Q Do you have any connection with keeping track of the stock in that department?

A When items are getting low and I see that they are out, I go by and tell him about it.

Q Whom do you tell?

A Fred.

Q Is that part of your duties?

A In a way, yes Sir.

Q At what point in the warehouse are goods received by the Fine Paper Department? Is there an unloading platform?

A Yes, Sir..

Q Where is it?

A At the front, on Franklin Street, and on the south side.

Q What is on the south side?

A It's some railroad.

Q Is there a siding there?

A Yes.

Q Which railroad?

A A. C. L.

Q Is there any other railroad siding adjacent to the warehouse?

A On the back side there's the Seaboard.

Q The goods come in over both of those sidings for the Fine Paper Department?

A Yes.

Q How frequently?

A Approximately every three months.

Q Are such shipments in carload lots or less than carload lots?

Q Who unloads those goods?

A Well, the warehouse men unload it if they get a chance. If they can't, they get someone else.

Q Who are the warehouse men in the Fine Paper Department?

A Lester Foster and Lee Parker.

Q Do you and Foster unload the other types of shipments received for the Fine Paper Department?

A Yes.

Q Do you unload the company trucks which bring in incoming merchandise?

A We help.

Q Do you assist in unloading the trucks of the railroad companies which make deliveries there?

A On the full cars and the Jacksonville Paper Company trucks.

Q Who unloads the trucks of the railroads who make deliveries?

A They unload themselves, on the platform in front.

Q Who checks in such goods for the Fine Paper Department?

A Mr. Brown and Fred Rawls.

Q Who takes them into the warehouse?

A The Fine Paper boys. Then if we get in a tight and can't get it in, the Coarse Paper will give us a hand.

Q Approximately what proportion of the space in the warehouse is occupied by goods of the Fine Paper Department?

A Approximately half.

Q Is the other half occupied by goods of the Coarse Paper Department?

A Yes.

Q How much of the entire space is occupied by the office?

A Just a small portion of it.

Q Does the Tampa branch store any goods for hire?

A Store any goods for hire?

Q In other words, for the public.

A No, Sir.

Q Does it ever happen that orders, in the Fine Paper Department, for items of fine paper will be received when you are out of stock in that line?

A Yes.

Q How are such orders filled?

A When we get an order and we're out of it, we go into the office to Fred and he'll wire or write Jacksonville and get it from them.

Q In such cases, are goods shipped here from Jacksonville to fill those orders?

A Yes.

Q Are such shipments ever received direct from manufacturers or jobbers?

A Yes.

Q How often does the situation arise that the Fine Paper Department will be out of a certain item?

A It's quite often we're out of something.

Q In other words, how often are orders received for goods which are out of stock?

A Every day except Sunday.

Q And is it customary to communicate with the Jacksonville office for the purpose of filling all such orders?

A Yes, Sir. We have to get in touch with them.

Q Do I understand that the Jacksonville office either ships the particular goods out of its own stock or has it shipped direct from the manufacturers?

MR. KURZ: Objected to, because the witness has not been shown to be in a position to have any knowledge as to how the Jacksonville office supplies such articles.

Q Answer only if you know.

A I understand when we're out we wire Jacksonville or write them, and if they don't have it they order it, and it comes in by them, and then to us. I don't know. It goes on to the mill.

MR. KURZ: I move to strike the witness' answer because it's shown that he has no personal knowledge of the matters he testified about.

Q Do you have any customers in the Fine Paper Department who place standing orders for regular deliveries of given quantities of merchandise?

A Yes.

Q How many such customers do you have?

A Three.

Q Who are they?

A The Peninsular Telephone Company, the Record Press of St. Petersburg, and the Florida Growers Press, in Tampa. Do I understand that question thoroughly? If we get a shipment in and hold it until they want it?

Q The question is do you have standing orders from customers of your own for regular recurrent deliveries?

A We have the Record Press. It's more or less a standing order.

Q What do you deliver to the Record Press?

A News print.

Q How often?

A Approximately three times a month.

Q Are regular recurring deliveries made three times a month?

A Yes.

Q Is that pursuant to a standing order?

A Yes.

Q Is the Record Press a customer of the Tampa Branch or the St. Petersburg branch?

A Sir?

Q Is the Record Press a customer of the Tampa Branch or the St. Petersburg branch?

A The Tampa branch.

Q. How are the deliveries made to it?

A Truck lines, and our truck—the Tampa Paper Company's truck.

Q What was the item which you mentioned you sold them?

A News print.

Q Is that order filled from stock on each occasion?

A Well, we get it in by carloads for them and hold it and deliver it to them each week. That's the way it was arranged.

Q Do I understand that carloads of news print are ordered for the specific purpose of filling orders of the Record Press?

A Yes, Sir.

Q How often do you receive a carload shipment for the Record Press?

A About every three months.

Q What portion of the carload do you deliver on each delivery?

A Well, we deliver about 70 reams, at 64 pounds.

Q With each delivery.

A Yes, Sir.

Q Do you know whom you get that news print from?

A We get it from—I don't know that—we get it from two different mills, and I don't know which one it is.

Q Are they in Florida?

A No, Sir.

Q How long have such deliveries been made?

A To my knowledge, for the last two and a half years.

Q Does it ever happen that a delivery to the Record Press will be made immediately upon receipt of a fresh supply?

A Yes, Sir.

Q Does it ever happen that a portion of a fresh supply will be unloaded direct from the car into the delivery truck of the Tampa branch?

A No, Sir, it goes into the warehouse.

Q How often does it happen that immediate deliveries will be made a portion of the new stock, to the Record Press?

A How often do we carry it over there?

Q How often does it happen that immediate deliveries will be made from a new supply which has arrived?

A I knew of two occasions.

Q You stated the paper was checked into the warehouse before being loaded for delivery there?

A Yes.

Q Was it then immediately loaded for delivery?

A Yes. We have one time picked up some news print from the Clyde Mallory.

Q Who has?

A The truck driver—Van.

Q Of what company?

A. Tampa Paper Company.

Q. What disposition was made of it on that occasion?

A. It was loaded on the truck, and backed into the front, and checked; then the truck was finished loading and went to St. Petersburg.

Q. Was that in the Fine Paper Department or the Coarse Paper Department?

A. The news print?

Q. Yes. The Fine Paper Department?

A. Yes.

Q. How long ago was that?

A. Approximately six months.

Q. To whom was delivery made in St. Petersburg?

A. The Record Press.

Q. What item or items are supplied to the Peninsular Telephone Company to fill standing orders?

A. From the Eastern Manufacturers we get Atlantic Bond in rolls, and we order so much, and we receive a shipment, and as they need it, twice a month, we carry it to them.

Q. Is that item sold to any other customer?

A. No, Sir.

Q. Is it ordered for the specific purpose of supplying the Peninsular Telephone Company?

A. Yes.

Q Are regular deliveries of that item made to the Peninsular Telephone Company?

A Only as they need it. There's no specified time.

Q How frequently is a fresh supply of that item received by the Tampa Paper Company?

A About once a year.

Q How large a quantity, if you know, is received?

Q How is it shipped to you?

A Boat lines.

Q How many pounds in a roll, if you know?

A Approximately 250 pounds.

Q How frequently does the Peninsular Telephone Company order deliveries of that item?

A About once every two months.

Q How is delivery made?

A By the Tampa Paper Company's truck.

Q I believe you said that that item was received from the Eastern Manufacturing Company.

A Yes.

Q Where is it located, if you know?

A I don't know.

Q Is it in Florida?

A No, Sir.

Q What was the name of the third customer whom you stated had a standing order with the Tampa branch?

A The Florida Grower Press.

Q What item is included in that standing order?

A Book paper.

Q Is that the only item?

A Yes.

Q Do you make regular deliveries of that item to the Florida Grower Press?

A Only as they need it. On that Florida Grower order, they order so many pounds, and when that shipment comes in we hold that shipment until they want it delivered, and it's delivered just as they want it.

Q A portion at a time.

A Yes.

Q Is the order which is placed by the Tampa Branch for the specific purpose of filling the order of the Florida Grower Press?

A Yes, Sir.

Q Is there any portion of that supply, when received, disposed of to any other customer other than the Florida Growers Press?

A No, Sir.

Q How frequently are orders placed for the purpose of filling the order of the Florida Grower Press?

A Well, it's so far back till—I guess about once a year.

Q How frequently does the Florida Grower Press order a portion of that stock?

A About once a week.

Q What quantity is ordinarily ordered by it?

A Approximately 8 cases, or approximately 54 reams.

Q About how many pounds is that per total shipment, per total order?

A That I couldn't say unless I figured it up.

Q How many pounds in a case?

A Approximately 450 or 500 pounds.

Q And how many pounds are there in each ream?

A Ninety-two, I believe. I wouldn't be positive.

Q By what means of transportation are those goods received from the manufacturer?

A By rail.

Q In carload lots or less than carload lots?

A Less than carload. We don't order a carload at a time.

Q Are such shipments received direct from the manufacturers?

A Yes, Sir.

Q Does the Jacksonville Paper Company ever make direct shipments to customers of the Tampa branch?

A Yes, they do, but now—the names of them I couldn't say.

Q Do manufacturers who supply the Tampa Paper Company ever make direct shipments to customers of the Tampa branch?

A Not that I know of.

Q Do you know of any occasion when special items have been shipped by manufacturers direct to customers of the branch, located in Ft. Myers or Clearwater or Tarpon Springs?

A I can't recall.

Q Does the Tampa branch ever get in a pool car shipment and after removing a portion of it for itself, let the car go on to a customer for removal of other goods?

A Only to a branch, like St. Petersburg.

CROSS EXAMINATION

By Mr. Kurz

Q You say that a shipment was made from the Tampa Paper Company to the Partin Paper Company about four months ago?

A Approximately. Yes, Sir.

Q What did that consist of?

A Scribe bond.

Q How much of it was shipped?

A It was nine cartons, as well as I remember. It

was around 9 cartons, and weighed approximately 135 to 140 pounds to the carton.

Q .And prior to that time the last shipment of that sort that you remember was in October, 1938?

A The month I couldn't say.

Q You don't know then whether it was in October or before October, 1938, do you?

A No, Sir. But I do know that it was made.

Q What orders did you receive yesterday for goods that were out of stock?

A Envelopes.

Q What kind?

A Sunbright Envelopes.

Q What orders for goods out of stock did you receive on Saturday? Last Saturday.

A That I can't recall.

Q Did you receive orders for goods out of stock on Saturday? I mean by that, for goods you did not have on hand in Tampa warehouse?

A Yes. I remember it coming in, but I don't remember exactly what it was. For some reason I was in the back. I know I had it on my checking book back there.

Q Was that the type of goods you usually carry?

A Yes.

Q Does anyone except the Record Press buy news print from the Tampa branch?

A Yes.

Q Do they buy the same kind of news print that the Tampa branch uses?

A Yes, Sir. Some of them.

Q Do you carry a separate stock for them?

A Yes.

Q You mean you carry a separate stock of news print for every customer?

A No, Sir, not every customer, but there's different sizes. The Record Press uses 36 x 48.

Q Does anybody else use that size?

A No, Sir.

Q Isn't it a fact that some of that is cut down when the occasion requires it to be used?

A In case we run out of one particular size we usually cut into it—shorten it.

Q You do cut down on it.

A Yes.

Q You carry that in stock and use it as occasion requires; is that correct?

A Sir?

Q If you have an order from another customer, you would use that paper, wouldn't you?

A We haven't had any for that particular size.

Q But you said you would cut it down when you had to do that.

A Yes, we have taken it and cut it down.

Q Isn't it a fact that you also cut down Atlantic Bond when other customers want it?

A Cut it down?

Q I mean if you have an order for a specific size of Atlantic Bond, isn't it a fact that you cut it to fill that order?

A Yes, Sir.

Q Is that the Atlantic Bond you have for the Peninsular Telephone Company?

A No.

Q Does anyone else use that bond?

A The bond the Peninsular Telephone Company uses is a roll. No one else in Tampa uses it. We don't stock it for any other customer.

Q Do you ever cut it if you have occasion to use it?

A No, Sir.

Q No one else uses roll bond.

A No.

Q How about book paper for the Florida Grower Press? Have you any other customers for book paper?

A Not of that size.

Q Do you ever cut that to fill other orders?

A No, Sir.

Q You have never known that to be done?

A No, Sir.

Q What is the size that you have for the Florida Grower Press?

A I don't remember the size.

Q Isn't it the regular stock size?

A No, Sir.

Q Do you keep a record, by weight, of the merchandise received by the Tampa branch?

A No, Sir.

Q Do you keep a record, by value, of the stock kept in the Tampa branch?

A No, Sir, I don't.

Q How do you arrive at your figure of 50% of the total goods received by the Tampa branch coming direct from manufacturers?

A Just my knowledge that—I have to help unload it, and I just believe it's that way.

Q You've kept no record, have you?

A I've had no cause to keep track of it out there.

RE-DIRECT EXAMINATION

By Mr. Browning

Q Mr. Parker, when were you first employed by the

Tampa Paper Company? When did you first go to work there?

A This August will be three years.

Q What was your job when you first went to work there?

A Truck driver.

Q How long were you a truck driver?

A A year and three months.

Q On these shipments to Mobile, I believe you said you remembered three.

A Yes, Sir.

Q Were they during the time you were a truck driver or after you moved in the warehouse?

A One was, and the other two were since I've been in the warehouse.

Q How long after you had been in the warehouse, roughly?

A Sir?

Q Before the first shipment to Mobile?

A About six months.

Q Have you ever cut down the paper bought for the Record Press to fill orders of other customers?

A Yes.

Q How often?

A Very seldom.

Q For what other customers have you filled orders out of stock bought for the Record Press?

A Well, it's very seldom that we cut into it like that, because we stock a standard size, which is what we cut from the size of the Record Press. 24 x 36 is the standard size. When we run out of it, we do cut this other size down.

Q Do you always cut it from the stock bought for the Record Press?

A Yes.

Q How often do you run out of stock of the standard size?

A It's very seldom.

Q Would you say it's as often as once a year?

A Yes, Sir.

Q Is it oftener than that?

A Well, approximately two or three times a year.

There being no further testimony, the witness was excused, the reading of the deposition and the signature of the witness being waived by the witness and by the parties hereto by their counsel.

DEPOSITION OF MRS. H. A. TEN EYCK

THEREUPON, MRS. H. A. TEN EYCK, produced and sworn as a material witness on behalf of the plaintiff, deposed and testified as follows :

DIRECT EXAMINATION

By Mr. Downing

Q Please state your name.

A Mrs. H. A. Ten Eyck.

Q Are you Mrs. Margaret M. Ten Eyck?

A Marie is my middle name.

Q Where do you live, Mrs. Ten Eyck?

A 502 West Osborne.

Q Tampa?

A Yes.

Q By whom are you employed?

A The Tampa Paper Company.

Q How long have you been employed by it?

A Five years and three months.

Q Now my question will relate only to the period since October 24, 1938. So in answering my questions, answer them with reference to that period since that date.

A Yes; Sir.

Q In what capacity were you employed on October 24, 1938?

A Stenographer.

Q Are you still employed in that capacity?

A Yes.

Q What was your salary on that date?

A \$21 a week.

Q You had been receiving that salary before then?

A Yes, Sir.

Q How long after that did you continue to receive the same salary?

A Until the week ending December 21st, last year.

Q 1940?

A 1940.

Q What was your salary changed to on that date?

A It was increased five per cent.

Q What was your total salary then?

A \$22.05.

Q You continued to receive \$\$22.05 a week since December 21, 1940?

A Yes.

Q What were your hours of work on October 24, 1938?

A Eight-thirty in the morning until I finished in the afternoon—approximately 5:30, 6:00, or later.

Q What was your average time for getting off?

A My average time was six and later.

Q Was any change made in your salary on or about October 24, 1938?

A No, Sir.

Q Or on or about October 24, 1939?

A No, Sir.

Q Or on or about October 24, 1940?

A No.

Q Was any change made in your schedule of hours worked on or about October 24, 1938?

A No, Sir.

Q Or on October 24, 1939?

A No, Sir.

Q Or on October 24, 1940?

A No, Sir. There was a change in schedule about that time, or about the first of November, 1940.

Q What was the occasion for it, if you know?

A I was asked to come to work a half hour earlier in the morning.

Q Did you get off a half hour earlier in the afternoon?

A No, Sir. I would get off about ten or fifteen minutes earlier some afternoons.

Q So that change resulted in an increase in your hours of work.

A Yes, Sir.

Q Was your salary raised just at that time?

A No, Sir.

Q Your raise came in December.

A Yes.

Q Then, as I understand your testimony, you have received a flat salary each week regardless of the number of hours worked.

A That's right.

Q Are you required to sign any receipt for your pay each week?

A I sign on the back of the payroll sheet that's sent down from Jacksonville.

Q On the back of it?

A Yes, Sir.

Q Do you sign for any certain amount of money?

A I don't see anything on the sheet except my name.

Q Do you see any record of the hours you worked?

A No, Sir.

Q Is any record kept by anyone of the hours you work?

A I don't know anything about it. I don't have anything to do with it at all.

Q Do you know whether any record is kept of the hours worked by any of the employees?

A No, I don't know anything about that at all.

Q You have never seen any?

A No, I have never seen any.

Q What department or division are you connected with?

A The Coarse Paper Department.

Q Do your duties bring you into contact with the Fine Paper Department?

A Only on occasions, and when Mrs. Lewis is on vacation.

Q How often is that?

A Once a year.

Q For how long?

A About ten days.

Q Do you also receive vacations?

A Yes, Sir.

Q With or without pay?

A With pay.

Q For how much time?

A It averages about ten days. It's one working week and one Saturday—one complete week and one Saturday.

Q In each year?

A Yes.

Q Since October 24, 1938, do you recall whether you have lost any time from work other than for vacations?

A Only on two occasions that I recall. Let me think back to be sure about that—December of 1939—on the—I think it was the 7th—sometime the first of December—I was out one day. I was ill. And then January, 1940, I was out. I went home at one o'clock one day and was out the next day, and the following day I went to work about ten o'clock. I had the flu.

Q Did you receive your full salary on those occasions?

A I received my full salary. There's another time I was out—two days, in June of last year

Q June, 1940?

A June, 1940.

Q Did you receive your full salary?

A Yes.

Q What connection do you have with orders received from customers in the Fine Paper Department?

A In the Fine Paper Department?

Q Pardon me. You're in the Coarse Paper Department. What connection do you have with orders received from customers in the Coarse Paper Department?

A I handle the orders in the Coarse Paper Department. After they are turned in to the Shipping De-

partment, I extend and bill all orders, and do all the billing.

Q In the Coarse Paper Department.

A Yes.

Q Do you have any connection with the preparation of orders for requisitions for new supplies?

A Not any more. Up till about a year ago I typed all requisitions to Jacksonville. The only time I handle that is when Mr. Williford is out of the office.

Q Do you type any of the correspondence with reference to orders?

A All of it. All of Mr. Williford's mail.

Q Is any of that correspondence directed to out of state manufacturers and jobbers?

A Yes, occasionally.

Q Generally, are all orders and requisitions made through the main office in Jacksonville?

A Yes.

Q Does it ever happen, in case of emergency or otherwise, that orders are made direct to the manufacturer?

A Yes.

Q Does that happen very often?

A Not very often. It's only when a customer is in a rush or something.

Q What happens to the usual formal requisition in those cases?

A It's sent to Jacksonville for verification. They confirm it to the mill—for confirmation.

Q Do you know whether any of those manufacturers are located in Florida?

A No.

Q Then all such orders of that sort are transmitted to out of state manufacturers.

A Yes.

Q If I understand your testimony correctly.

A Yes.

Q Do you know of any instances where manufacturers made shipments direct to customers of the Tampa branch?

A Yes, we have. We have shipments made direct.

Q Where are such customers located?

A We have customers in Ft. Myers, Sarasota, Clearwater, Tarpon Springs.

Q Do you have any in Brooksville?

A I believe they have made direct shipments to customers in Brooksville.

Q You say "they" have made direct shipments to customers in Brooksville. I'm inquiring about direct shipments from manufacturers to the customers?

A That's what I mean. They were made for us, the Tampa Paper Company.

Q You mentioned Ft. Myers, Sarasota, Clearwater, and Tarpon Springs. Are there customers in those cities to whom manufacturers have made direct shipments for you?

A Yes.

Q How frequently does that happen?

A I can't say definitely how frequently to each customer, but we have direct shipments that have been billed, about every week.

Q You handle those billings?

A I have up to the present, yes.

Q Do you know of any customers in Sebring or Lake Wales, or Avon Park, to whom direct shipments were made?

A I don't think we've made direct shipments to Lake Wales. I can't recall any customers off-hand at Avon Park or Sebring that manufacturers have delivered to for us.

Q At your direction.

A Yes.

Q Do you recall any direct shipments to customers at Wauchula or Frostproof or Ft. Meade?

A I don't recall any to Frostproof or Ft. Meade, but I think we have had a direct shipment made to Wauchula.

Q Do you recall the names of any of the customers

in any of those cities to whom direct shipments have been made by manufacturers?

A At Ft. Myers, the Sidney Davis Men's Shop; at Sarasota, the Oleander Icecream Company.

Q How about Clearwater?

A I can't recall the name of the customer there.

Q Can you recall any at Tarpon Springs?

A I think it was Tarapani's Department Store we had a shipment move to just recently.

Q Did you mention a direct shipment to Brooksville?

A I may be mistaken on this, but I'm quite sure we had a direct shipment move to Lingle's Department Store and the Ward Nursery, at Brooksville, also.

Q Did you mention a direct shipment to Lake Wales?

A That I was a little in doubt about. If we had a direct shipment to Lake Wales, it was in all probability to the Lake Wales Dairy. But I don't want to say definitely on that. Most of those are handled through Lakeland.

MR. KURZ: I move to strike the witness' testimony as to Lake Wales on the ground that it is pure supposition and guess work.

Q Do you recall the names of the customers at Wauchula to whom direct shipments have been made by manufacturers?

A No, I can't recall the name. It was a shoe repair or shoe company in Wauchula, but I can't recall the name.

Q Did Mr. Williford in any manner come in contact with this type of order or shipment?

A Yes.

Q What type of items, handled through your Coarse Paper Department, are manufactured by the Southern Industries Company in Jacksonville?

A Grocery bags, Kraft grocery bags, millinery and notion bags, adding machine paper, brooms, school supplies, such as fillers and tablets.

Q How about mops?

A As I recall, our mops come from the Cleanse-All Manufacturing Company.

Q Where are they?

A Atlanta, Georgia.

Q Other than the goods produced by Southern Industries, is other merchandise received from or through the Jacksonville Paper Company? In Jacksonville?

A I think so.

Q Are any of the goods handled by the Coarse Paper Department received by direct shipments from manufacturers?

A You mean shipped direct from the mill to the Tampa Paper Company?

Q Yes.

A Yes.

Q How are such shipments made—that is, by what means of transportation?

A Boat and rail.

Q Are there any by motor carrier freight lines?

A I think there are less carload shipments come in on common carrier truck lines.

Q Are any received in the manufacturers' own trucks?

A I wouldn't know about that.

Q Are any shipments received from manufacturers by railway express?

A I think so. You understand, I don't handle that. I don't check that. This is just a general impression.

Q Are carload lots ever received direct from manufacturers?

A I beg pardon.

Q Are carload lots ever received direct from manufacturers?

A Yes.

Q How frequently?

A I don't know just how frequently. Sometimes we get in a carload of merchandise once a month from certain mills, other times about six weeks to two months.

Q Are pool cars or split cars received direct from manufacturers?

A Yes.

Q With what branches are they split?

A Lakeland and St. Petersburg.

Q Does Tampa ever get a split car a portion of which has been unloaded in Jacksonville?

A I think that they have.

Q Who does the ordering for the Coarse Paper Department?

A Mr. Williford.

Q Do you have any connection with the preparation of orders or requisitions?

A Not any more, no Sir.

Q Do you know whether, in preparing orders for Tampa stock, it is ever customary to include orders from Lakeland or St. Petersburg for shipment?

A Yes.

Q Is that the general rule?

A Yes.

Q When such shipments are received, how is the division made between the branches?

A If the shipment is consigned to Tampa it's unloaded here and transported to Lakeland and St. Petersburg by truck.

Q By the Tampa Paper Company's truck?

A The Lakeland truck comes over and picks up all their merchandise. We send our truck to St. Petersburg.

Q Are those deliveries made promptly, or do the goods remain in the warehouse for considerable periods of time?

A The goods remain sometimes in the warehouse for quite a while, until it's convenient for them to haul it.

Q Do you know whether in the warehouse they are ear-marked for the other branches?

A That I don't know.

Q How frequently is it necessary to re-order the chief lines or goods distributed through the Coarse Paper Department?

A That question is hard to answer because it depends on the season of the year and the turn-over. Sometimes in winter we order more frequently on most all orders than we do in summer months. There's usually an order goes in about every four or six or seven weeks on most every item in stock, except slow moving items such as baskets.

Q Do the fast-moving items turn over in from four, six, and seven weeks?

A Four to eight, I think.

Q Are orders placed to fill the exhausted stock?

A Yes.

Q Does it ever happen that stock is exhausted in a particular line before a fresh supply is received?

A Yes.

Q In those cases, does it ever happen that a portion of the new supply will be immediately loaded out for delivery?

A Do you mean loaded from the transportation company to delivery? Clarify that, please.

Q I hadn't gotten to that point yet. My question related to whether, when stock had been exhausted in a given line and a fresh supply received, has it ever happened that goods were immediately re-loaded for delivery after receipt?

MR. KURZ: Objected to, because the witness has nothing to do with the loading of shipments.

Q State only if you know, Mrs. Ten Eyck.

A Yes, as soon as merchandise is received we fill the orders we have on hand for that particular item.

Q Do you know of your own knowledge whether all such goods are checked in physically through the warehouse before being re-loaded for delivery?

A Yes, I know that, that it is checked into the warehouse.

Q Do the goods physically come into the warehouse if you know?

A I can't say that they do. I'm going by the Freight Receipt Book.

Q Do you know of any recent change in the policy of the company with reference to having the goods brought physically into the warehouse before being re-loaded for delivery?

A There have been instructions issued that all merchandise be brought into the warehouse before it's delivered to the customers.

Q How long ago was that?

A I don't know how long.

Q Has it been recent?

A Yes, it's been recent.

Q Since January 1st, would you say, of this year?

A I think those instructions were issued before. I can't say definitely the time, because I don't remember.

CROSS EXAMINATION

By Mr. Kurz

Q Mrs. Ten Eyck, do you have anything to do with the receiving and handling of merchandise?

A The delivery of the merchandise, I bill all merchandise that goes out when it's ready for delivery. I don't handle any merchandise.

Q Where is your desk?

A In the office.

Q And you don't ordinarily see the merchandise come in and go out, do you?

A I quite frequently see it go out, because there are times when I'm in the Shipping Department when the trucks are loaded out. I frequently see them loaded on the trucks. I have, on occasions, checked it on the trucks—read off the invoices and checked the merchandise on the truck.

Q Was that an ordinary practice?

A Ordinarily that's not in my line of duty.

Q When you say you have "seen it go out", You mean you have seen the truck pull up and be loaded and go out?

A That's right and, as I say, on one or two occasions I've been down there to help the boys. I've read the invoices and checked the invoices as the boys loaded it on the truck.

Q You stated that it happens sometimes that items will not be in stock. How do you know that?

A We receive an order from a customer and that order is passed on to the Shipping Department to be filled, and when those orders are ready for the truck and ready for the invoice they are passed back to me, and any item we're out of, there's a notation made on the bottom of the order that we're out of such and such an item and that also is typed on the invoice to the customer. That's how I know.

DIRECT EXAMINATION

By Mr. Downing

Q Do you know of your own knowledge whether the Tampa Paper Company makes transfers of merchandise to the Mobile branch?

A So far as I know, there has never been a transfer made of coarse paper to the Mobile branch, since I have been in the organization.

Q Do you know of your own knowledge whether transfers have been made to other out of state branches from Tampa?

A I don't recall any.

Q Do you recall whether the Tampa branch has ever made shipments to customers of other branches in other states?

A No, Sir. I wouldn't know about that.

Q Do you know of your own knowledge whether other out of state branches have ever made transfers to the Tampa branch?

A No, I'm quite sure they haven't.

Q Do you know of your own knowledge whether other out of state branches have filed orders of the Tampa branch by direct shipment to the Tampa customers?

A I don't think so. I don't recall any.

Q Do any of the customers of the Coarse Paper Department place standing orders for regular recurring deliveries?

A I don't recall any. I don't think so.

Q Is the Peninsular Telephone Company a customer of the Coarse Paper Department?

A Yes.

Q What does it receive through the Coarse Paper Department?

A We sell them pencils, toilet paper, and some paper bags.

Q Is the Record Press of St. Petersburg a customer of the Coarse Paper Department?

A No.

Q Is the Florida Grower Press a customer of the Coarse Paper Department?

A No.

Q. Is the Poinsetta Dairy Company a customer of the Coarse Paper Department?

A. Yes.

Q. Do you know whether the Poinsetta Dairy Company places or has placed standing orders for certain types of goods?

A. Would that come under the heading of a contract?

Q. A contract might well contain a standing order. Do you know whether there is a contract between the Poinsetta Dairy Company and the Tampa branch for regular recurring deliveries of stated amounts?

A. Right now I don't know whether we have a contract with them now or not.

Q. Do you recall whether there is any such order placed by the Purity Icecream Company of Plant City?

A. Yes, we have a contract with them.

Q. For what?

A. Five-ounce icecream cups.

Q. In what lots are deliveries made, if you know?

A. I think it's in 5,000 and 10,000 lots.

Q. Is that a special size of cup?

A. It's not the stock size.

Q. Do you have other customers who order that same size cup?

A. I don't recall any.

Q. Do you know whether it is necessary for the Tampa branch to make special orders from the manufacturer for those cups of that size?

A. Yes, because we don't stock them.

Q. Do you know what manufacturer supplies that cup?

A. No, I don't.

Q. Is it a cup which is supplied through Southern Industries?

A. No.

Q. Do you know in what quantity that cup is ordered by the Tampa branch?

A. No. I don't know what quantity it's ordered in. The only thing I know is what quantity it goes out, the quantity I bill.

Q. Do you know how often re-orders are placed for that cup?

A. No, sir.

Q. Is the Tampa Better Milk a customer of the Coarse Paper Department?

A. Yes.

Q. What do you sell them?

A. Waxed tubs, cottage cheese tubs, icecream tubs, and some other supplies. I think paper towels.

Q. Are any of those items not carried generally in stock?

A. I think so.

Q. Which ones?

A. I think it's the waxed cottage cheese tubs that we don't carry in stock—the waxed tubs—I don't know that they are cottage cheese tubs.

Q. Do you know whether the Tampa Better Milk has a standing order with the Tampa branch for those tubs?

A. No, Sir, I don't.

Q. Is that tub ordered by other customers of the Tampa branch?

A. Yes, we have a few customers on that particular item.

Q. Is it necessary to make special orders for that type of tub?

MR. KURZ: Objected to, because the witness is not shown to have anything to do with the making of orders.

A. I would judge so, since it isn't a stock item.

Q. Do you know of any instances, Mrs. Ten Eyck, when the Tampa branch has returned goods to manufacturers for any reason?

A. Yes, I've seen correspondence on it. I mean I have had correspondence with Jacksonville wherein we were returning merchandise to the mill.

Q. To the manufacturer?

A. Yes.

Q. Were any of those manufacturers located in Florida?

A. No.

Q. How often has that happened?

A. Not often. It's only about once or twice a year that it's necessary to return something.

RE-CROSS EXAMINATION

BY MR. KURZ:

Q. You testified about special orders to the customers at Wauchula and other points. When was the last order shipped direct from the manufacturer to the customer in Wauchula?

A. I can't say definitely when the last order was shipped to Wauchula. We have very few orders in that section.

Q. How about special orders direct from manufacturers to customers at other points? When were those shipped?

A. I can only tell you this, Mr. Kurz: That once—on an average of once a week I bill these direct shipments, and I know that during the month of January I billed two to six items—I had two to five orders each week that were shipped direct to customers. I can't remember each customer and the town they are in, on direct shipments. There's too many tickets go over my desk to remember that.

Q. Who placed the orders?

A. They were sent in by the salesman working the particular territory.

Q. What was done with the orders when they came in?

A. Mr. Williford ordered the merchandise through Jacksonville, sent in his requisition in the usual manner, I presume. I don't handle the requisitions any more.

Q. Then you don't know how that was done.

A. I only know how it was handled up to a year ago, because I handled the requisitions myself up to a year ago last December. I typed all requisitions, and I'm naturally assuming that Mr. Williford hasn't changed his policy in handling merchandise.

Q. Mr. Williford does it now?

A. Mr. Williford has always supervised the ordering of merchandise.

Q. Then at the present time the only person in the Tampa branch who would come in contact with these direct shipments would be the salesman who takes the order from the customer, and Mr. Williford who makes the requisition on Jacksonville; is that right?

A. That's right.

Q. Mr. Williford is the Manager.

A. Yes.

RE-DIRECT EXAMINATION

BY MR. DOWNING

Q. Did I understand you to say that in the last month you came in contact with from two to five or two to six billings each week on direct shipments to customers?

A. I think it would average two, three, four, or five. It doesn't run the same number every week, but those usually come through about once a week, on those direct shipments.

Q. What do you do in connection with the billing and invoicing?

A. I invoice those shipments the same as if the merchandise had gone out of the warehouse. I bill the customer and list the items and prices, and the amount of the invoice.

Q. Then those direct shipments come within your personal knowledge.

A. They have up the present.

RE-CROSS EXAMINATION

BY MR. KURZ:

Q. Do you know what those items amount to, in dollars and cents, per week?

A. No, I can't tell you, because they vary. Sometimes we'll have an order for a customer that amounts to a dollar or less, and then we'll have another direct shipment amounting to several hundred dollars.

Q. On the average how much per week would that amount to?

MR. DOWNING: Objected to, on the ground that it is irrelevant and immaterial.

A. That, Mr. Kurz, is a hard question to answer, because I haven't given it any thought, and I wouldn't know. Perhaps I would have two or three orders one week amounting to a lot, and the next week they wouldn't amount to nearly so much.

Q. How did it compare with the total volume of business done at the Tampa branch?

MR. DOWNING: Same objection.

Q. Would those substantial—those direct orders be a substantial percentage of the business done by the Tampa branch?

MR. DOWNING: Same objection.

A. No, it's a small percentage.

Q. What do those items consist of?

A. They will vary—on most anything, from cellulose tape to printed clothing boxes, printed bags, printed icecream cartons, printed wrapping paper, and other items.

Q. Don't you know how much they would average per week or per month?

A. I haven't the slightest idea.

There being no further testimony, the witness was excused, the reading of the deposition and the signature of the witness being waived by the witness and by the parties hereto by their counsel.

DEPOSITION OF EARNEST H. ATKINS

THEREUPON, EARNEST H. ATKINS, produced and sworn as a material witness on behalf of the DEFENDANTS, deposed and testified as follows, it being stipulated between counsel that notice of the taking of the deposition of the witness Atkins was waived, but that the right to object to his testimony was reserved:

DIRECT EXAMINATION

BY MR. KURZ:

Q. State your name.

A. Earnest Atkins.

Q. What is your occupation?

A. Fine Paper Manager and Salesman for the Tampa Paper Company.

Q. How long have you been employed by that company?

A. Six and a half years.

Q. Are you familiar with the various types of orders placed by customers of the Tampa Paper Company?

A. In the Fine Paper Department I am, yes Sir.

Q. Is news print handled by the Fine Paper Department?

A. Yes, Sir.

Q. Are you familiar with the type of news print used by the Record Press in St. Petersburg?

A. Yes, Sir.

Q. Is that a stock item? Do you ordinarily stock the item that they use?

A. Yes, Sir. It's listed in our price book.

Q. Is that type of paper sold to other customers besides the Record Press.

A. Yes, Sir, it is.

Q. Are you familiar with the Atlantic Bond Paper used by the Peninsular Telephone Company, bought from the Tampa Paper Company?

A. Yes, Sir.

Q. Is that a stock size?

A. It's for a Number 3700 Addressograph Machine. Yes, Sir.

Q. Anyone who wanted to order that paper and had occasion to use it, could use it on that type of machine; is that correct?

A. Yes, Sir.

Q. Do you know any other customer that the Jacksonville Paper Company has for that type of paper?

A. Not locally. No, Sir.

Q. Do you know whether they have in Jacksonville?

A. I think they have one in Jacksonville.

Q. Are you familiar with the type of book paper used by the Florida Grower Press?

A. The type of book paper? They use a lot of our book paper, different kinds of book paper.

Q. Is the paper they buy from the Tampa Paper Company an ordinary stock item?

A. Yes, Sir.

Q. Do other customers use that same type of paper?

A. Yes.

CROSS EXAMINATION

BY MR. DOWNING:

Q. What is the size of the printing paper used by the Record Press?

A. 36 x 48.

Q. Is that the usual size in that business?

A. Well, it's the usual size for the size paper that they use. It's a kind of tabloid size paper.

Q. Do you have any other customers that print that size paper?

A. Yes, I do.

Q. Who?

A. The Renaldi Printing Company. It's printed by them. There's various sizes of tabloid size papers.

Q. I'm asking about the size paper which is used by the Record Press regularly.

A. What's that?

Q. I'm asking about the size paper that is used by the Record Press.

A. Well, now, they use—they buy two or three different sizes from us. This 36 x 48, we sell more of that particular item than the others.

Q. Is that the same size as the paper being used by Renaldi?

A. We have cut that down. Yes, Sir.

Q. It's necessary to cut that down for Renaldi.

A. He's changed size on various occasions. I'd have to check for that.

Q. How often have you filled Renaldi's order from stock held for the Record Press?

A. How often have I filled Renaldi's order from stock held for the Record Press of the Record Press size?

Q. The Record Press' special size.

A. We don't have a special size for the Record Press.

Q. You just got through testifying, as I understood you, that there was one special size that other papers don't print.

A. We carry a 36 x 48 in stock, which is one size that the Record Press buys from us.

Q. And, as I understand your testimony, you have to cut that in order to supply Renaldi.

A. Yes.

Q. What other customers do you supply from that particular paper?

A. Well, these sometimes use 24 x 36. We have to cut that in two. We carry the double size in lots of items. That's the double size of 24 x 36.

Q. Is that the usual size?

A. No, Sir, it's a double size.

Q. It's unusual in this neighborhood, isn't it?

A. No, Sir.

Q. Why is it that only the record press prints a newspaper that fits that particular sheet if it's not an unusual size here.

A. We have sold that size to other people.

Q. Without it being cut?

A. We have had to cut it down.

Q. Then the size used by the Record Press is an unusual size.

A. No, Sir. It's not an unusual size.

Q. But only the Record Press uses it without cutting.

A. No, Sir.

Q. Who else uses it without cutting.

A. As I just told you, we cut it down to 24 x 36 sometimes. Some sizes we have to cut are not cut out of anything but 36 x 48.

Q. Is the size that you supply to the Record Press 36 x 48?

A. Yes, and we supply them with another size.

Q. And to fill Renaldi Printing Company orders, it's necessary to cut that to 24 x 36.

A. On some of those. Yes, Sir.

Q. And to fill other Renaldi orders you cut that to other sizes.

A. He uses a size that's an inch smaller than

that. Rather than carry these stock sizes, we carry that size to take care of both of them.

Q. You cut it one inch to adjust it to the Renaldi order.

A. Yes, it just saves storage space.

Q. Do other customers use all of the various types of paper supplied to the Florida Grower Press?

A. Yes, Sir—I don't know what paper you're talking about. They use a lot of paper. They use almost every one we've got in there. I'm speaking of the papers in the Fine Paper Department, the printing papers. We do sell some wrapping papers, but you're speaking of printing papers.

RE-DIRECT EXAMINATION

BY MR. KURZ:

Q. Do you have any other customers using the same size paper that the Florida Grower Press uses on this so-called Label Paper?

A. We stock a size 29 x 45 that we sell them a lot of. We have one or two other customers—not as large as the Florida Grower.

Q. Is it or not usual to carry double sizes in stocks so as to use that for filling orders of smaller sizes?

A. Well now, there's a few small printers that do print sizes that we cut out of that—that don't have cutters that will cut out of that particular size.

Q. I'm not talking particularly about this label paper, but generally, is it usual to carry double size stock, in order to have that for the purpose of filling the sizes that customers require?

A. We carry lots of items in double size to keep from having to duplicate the single size. You can always cut your double size down, but you can't increase the single size up to the double size. That's why we carry lots of double sizes.

Q. Does the Tampa Paper Company have a cutting machine?

A. Yes, we do.

RE-CROSS EXAMINATION

BY MR. DOWNING:

Q. On this size 36 x 48 supplied to the Record Press, what's the size of that when you cut it down half?

A. 24 x 36.

Q. Exactly cut in half it's 24 x 36?

A. Take 36 x 48, and cut it in half and what have you got—24 x 36.

Q. My arithmetic must be off.

Mr. Atkins was thereupon excused, but was recalled later in the Hearing by counsel for defendants, and testified further as follows:

RE-DIRECT EXAMINATION

BY MR. KURZ:

Q. Mr. Atkins, are you familiar with the shipments made to the Partin Paper Company in Mobile?

A. Yes, Sir.

Q. When was the last shipments made to them?

A. Oh, the middle of December.

Q. How many shipments were made in the last two months?

A. That would be in December.

Q. December and January.

A. One is all I can think of.

Q. Before that time when was a shipment made—before December?

A. I couldn't answer that, because I don't know.

Q. Do you handle those shipments?

A. Yes.

Q. Would they be made pursuant to your orders?

A. Yes.

Q. Are you familiar with an order placed by the Sebring American, for news print?

A. Yes. How do you mean "placed"? They buy from us from time to time.

Q. Do you have a regular order from them for news print?

A. They buy a size all the time—it's according to when they have the money. They wire in and tell us to ship news print, and I think they use it every week.

Q. Do they have a standing order to ship 125 pounds a week?

A. Not that I know of. No, Sir.

Q. Do they have any other standing order to ship any stated quantity at any stated time?

A. No, Sir, not a standing order.

Q. When you get orders from them, is it for their requirements from time to time, or is it a regular order for a certain quantity to be delivered at regular periods?

A. The Sebring American?

Q. The Sebring American.

A. They order the same amount when they order.

Q. How often would they order it?

A. You've got me there, because I don't keep up with the territory that well—how often they send orders in. Our salesman takes orders down there. Sometimes he mails them. I couldn't tell you.

Q. Do you know whether or not they have an order to ship them 125 pounds per week indefinitely until they stop the order?

A. No, Sir, I don't.

Q. Do you mean you don't know, or they don't have it?

A. I don't know that they have a standing order.

Q. Do you know of such a thing as enamel book paper?

A. Do I what?

Q. Do you know of such a thing as enamel book paper?

A. Yes, Sir. We've got several grades.

Q. Is that what you sell the Florida Grower Press?

A. We sell them some. In fact I have an order for them right now.

Q. Do they have a special size that they especially use?

A. No.

Q. Do other customers use the same size that they order from you?

A. Yes, Sir.

Q. Isn't it a fact that the Hillsborough Printing Company uses 29 x 44 book paper?

MR. DOWNING: Objected on, on the ground that it's leading.

A. What type of book paper? Yes, Sir, they use some of it.

RE-CROSS EXAMINATION

BY MR. DOWNING:

Q. Mr. Atkins, with reference to the shipments to Mobile, I understand that your testimony relates to items shipped out of the Fine Paper Department.

A. Yes.

Q. Do I understand that you are Manager of the Fine Paper Department?

A. Yes.

Q. Are you also a salesman?

A. Yes.

Q. In what territory?

A. Tampa.

Q. The City of Tampa?

A. Yes.

Q. How much of the time do you spend out of the office?

A. Here lately it's been about half and half, but I spend three quarters of my time or more.

Q. Who handles the office routine, the office details, in that Department, in your absence?

A. What details do you have reference to?

Q. The routine office details in the Fine Paper Department.

A. Fred Rawls.

Q. Does he also handle them when you are present?

A. Yes.

Q. Does Mrs. Lewis, the stenographer in the Fine Paper Department, assist in the handling of those routine office details?

A. She does the billing for the Fine Paper Department and takes my dictation.

Q. She handles the correspondence also?

A. Yes, Sir.

Q. Who does the ordering for the Fine Paper Department?

A. I do.

Q. Do you prepare the requisitions?

A. Some of them. And Rawls prepares some. I check them all.

Q. You check all of them before they are mailed?

A. Yes.

Q. Suppose you were out of the city when it was necessary to mail one.

A. They don't go off till the night mail.

Q. You check all of them?

A. If it's some simple item we just order out of Jacksonville that they know automatically, I don't check that. Sometimes I give them an order over the phone.

Q. Is it necessary for each order or requisition to bear your OK?

A. No, Sir. I OK all large orders, and I look at most of the small ones.

Q. If you're present.

A. I'm present most every night. I'm present every night.

Q. Does anyone keep any record of the hours worked by the employees in the Fine Paper Department?

A. No, Sir. I don't.

Q. Does anybody else, as far as you know?

A. Not in the Fine Paper Department.

There being no further testimony, the witness was excused, the reading of the deposition and the signature of the witness being waived by the witness and by the parties hereto by their counsel.

DEPOSITION OF MRS. FRED L. LEWIS

THEREUPON, MRS. FRED L. LEWIS, produced and sworn as a material witness on behalf of the PLAINTIFF, deposed and testified as follows:

DIRECT EXAMINATION

BY MR. DOWNING:

Q. State your name.

A. Mrs. Fred L. Lewis.

Q. Where do you live, Mrs. Lewis?

A. 620½ West Buffalo.

Q. Tampa.

A. Yes.

Q. By whom are you employed?

A. The Tampa Paper Company.

Q. Is that a branch of the Jacksonville Paper Company?

A. Yes.

Q. How long have you been employed by them?

A. About four years—approximately four years.

Q. The period I am interested in and to which my questions will relate is the period since October 24, 1938, when the Wage & Hour Act became effective; so in answering my questions, confine them to that period of time. In what position are you employed?

A. Stenographer.

Q. In what division?

A. The Fine Paper Department.

Q. Do your duties, roughly, compare with those of Mrs. Ten Eyck in the Coarse Paper Department?

A. Yes.

Q. How long have you been a stenographer in the Fine Paper Department?

A. Ever since I started to work there.

Q. What was your salary in October 24, 1938?

A. I believe it was \$17.

Q. \$17 a week?

A. Yes, Sir. \$17 a week.

Q. Has your salary been changed since that time?

A. Yes. I received a two dollar a week raise in December.

Q. 1940?

A. Yes.

Q. From October 1938 to December, 1940, your salary was \$17 a week?

A. October, 1938? I started to work in April, and it was—yes, it was.

Q. \$17 a week up until December, 1940?

A. Yes.

Q. What was your schedule of hours in October, 1938?

A. What hours did I work?

MR. KURZ: Objected to, because the witness is not one of the employees named in the Bill of Particulars furnished in this case.

A. I didn't have any schedule. I was hired—when I was hired the man who hired me told me the hours would be 8:30 to 5:30.

Q. Is that the schedule you were working in October, 1938?

A. That's what I was hired for. That's not exactly what I worked.

Q. Were you then reporting for work at 8:30 in the morning?

A. Yes.

Q. When were you leaving work in the evening?

A. When we got through.

Q. What would it average?

A. In October, 1938, along in there, it was six or seven o'clock.

Q. Did you take any time off for lunch?

A. Yes.

Q. How much?

A. An hour.

Q. Did you work a full day on Saturdays?

A. No.

Q. When did you get off on Saturday?

A. One o'clock.

Q. Were you paid the same salary regardless of the number of hours worked each week?

A. Yes.

Q. Was any change made either in your salary or your hours worked on October 24, 1938?

A. No, Sir.

Q. Was any change made either in your salary or your hours worked on or about October 24, 1939?

A. No, Sir.

Q. Was any change made either in your salary or your hours worked on or about October 24, 1940?

A. No, Sir.

Q. You continued on each of those dates to receive the same flat salary regardless of the number of hours worked?

A. Yes, Sir.

Q. Who prepared the requisitions in the Fine Paper Department?

A. Well now, Fred Rawls dictates to me and I make them up, not all of them but a great deal of them. Sometimes he writes the requisitions in longhand and mails them himself.

Q. Where are all requisitions sent?

A. Some to Jacksonville, some direct to mills—most are sent to Jacksonville.

Q. What was the occasion for requisitions being sent direct to manufacturers?

A. When a customer is in a hurry for it, if it's an urgent matter, we send it direct to the mills.

Q. Do you notify the Jacksonville office?

A. Yes.

Q. How often does that happen?

A. Well, that's hard to say how often—just whenever a customer is in a hurry—I don't believe more than just two a week—any more than that—one or two a week.

Q. One or two a week?

A. Yes.

Q. Are those orders shipped direct to manufacturers—that is, from the manufacturer to the Tampa branch?

A. If a customer is in a big hurry they have been shipped direct to the customer. Not very often. As a rule, we try to have them come to Tampa.

Q. Do you recall any occasion when the manufacturer shipped direct to the customer?

A. Yes, I can.

Q. Give us an example—an instance.

A. I couldn't give you the exact date. Last week we had an order shipped direct the mill—an ink mill, direct to the customer.

Q. Where?

A. The mill was in Washington, D. C.

Q. Where was the customer?

A. Dunedin.

Q. Do you recall any other instances?

A. I can't give them to you off-hand. I know there have been more, but I really can't give you any definite information.

Q. Mrs. Lewis, other than Southern Industries Company do you know any manufacturers in Florida from whom shipments are received?

A. No, Sir.

Q. What types of goods handled through the Fine Paper Department are supplied through the Southern Industries and the Jacksonville Paper Company?

A. What types of goods? I don't understand all I know about Southern Industries, but I know from Jacksonville we get envelopes and poster paper. Off hand that's all I can think of.

Q. What proportion of the goods distributed through the Fine Paper Department are received from the Jacksonville Paper Company in Jacksonville?

MR. KURZ: Objected to, because the witness has not been shown to have any knowledge of the percentage of goods received or any connection with the ordering of goods.

A. I would say about a third—approximately one-third come from Jacksonville.

Q. Does the Tampa branch also receive shipments direct from manufacturers?

A. Yes.

Q. Does it receive merchandise from any other sources than from the Jacksonville Paper Company and direct from the manufacturers?

A. Not that I know of.

Q. Then is the remaining two-thirds of the merchandise received by the Fine Paper Department received by direct shipment from the manufacturers?

A. Shipped direct from the manufacturer to the Tampa Paper Company.

Q. That accounts for the remaining two-thirds of the goods handled here.

A. Yes.

Q. I believe you stated that other than Southern Industries you knew of no manufacturers who are located in Florida.

A. That's correct.

Q. By what means of transportation are shipments received direct from manufacturers?

A. Boatlines, and sometimes shipped by all rail.

Q. Is anything shipped over motor carrier freight lines—that is truck lines?

A. I don't believe anything is shipped direct from a mill all the way on a truck line.

Q. Anything in the manufacturer's own truck?

A. No.

Q. Does it ever happen in the Fine Paper Department that you will run out of an item before a fresh supply is received?

A. Yes, Sir.

Q. On those occasions orders have accumulated from the customers?

A. Yes.

Q. When the fresh supply is received is it customary to fill those orders immediately?

A. Yes, it's customary to fill them as soon as we can.

Q. Do you know of any such occasions where goods were unloaded directly from the carrier on to the company truck for delivery to the customer?

A. I can't give you any specific date or anything. It has been done but I can't give you any date or anything.

Q. Is it a regular occurrence?

A. No, Sir, not unless the customer is in a very big hurry; then we will send a truck down to the boatline where the merchandise is and pick it up and send it to the customer.

Q. On such occasions, do the goods ever physically come on to the floor of the warehouse?

A. Not on those occasions like that, no.

Q. Do you have any customers in the Fine Paper Department who place standing orders for regular recurring deliveries?

A. Yes, Sir.

Q. Who are some of them?

A. The Sebring American in Sebring has a regular order.

Q. For what?

A. Newsprint.

Q. Any particular size?

A. Yes, but I don't know what it is.

Q. Any others?

A. That's the only one I know of.

Q. How frequently are deliveries made to the Sebring American?

A. There are regular orders to be filled every two weeks.

Q. How much news print is shipped every two weeks?

A. Approximately 125 pounds.

Q. Approximately 125 pounds?

A. Yes.

Q. Is that an item that is carried generally in stock?

A. Yes.

Q. Is the Record Press in St. Petersburg a customer of the Fine Paper Department?

A. Yes.

Q. Do you know whether it has any standing order for paper of a particular size?

A. Yes.

Q. What is the size?

A. 36 x 48 news print.

Q. Do you have any other customers who can use that identical size?

A. We don't have any other customer we sell that size to.

Q. Does the standing order of the Record Press require deliveries at particular intervals?

A. We deliver on Saturdays.

Q. Once a week?

A. Yes.

Q. What amount, if you know?

A. We don't always deliver the same amount. As a rule it's 40 or 60 reams approximately.

Q. How many pounds in a ream?

A. 64.

Q. How is the delivery made?

A. By our truck.

Q. Is the Peninsular Telephone Company a customer of the Fine Paper Department?

A. Yes.

Q. Does it have a standing order for any particular item of a special kind?

A. Yes.

Q. What is that?

A. Addressograph paper.

Q. Does any other customer of yours use that particular type of addressograph paper?

A. No, Sir.

Q. In what quantity and at what intervals are deliveries made to fill that standing order?

A. I believe they get two rolls once a month, about the first of every month.

Q. What is the weight of a roll?

A. I couldn't tell you.

Q. Is the Florida Grower Press a customer of the Fine Paper Department?

A. Yes.

Q. Does it have a standing order for regular recurring deliveries of a particular item of goods?

A. We have a merchandise in the warehouse for them that they order out when they want it.

Q. Is it of a type generally carried in stock?

A. No, Sir.

Q. Do you carry it in stock for the express purpose of supplying the Florida Grower Press?

A. Yes.

Q. Do you supply any other customer with that particular item?

A. No, Sir.

Q. What is that item?

A. Enamel book paper.

Q. Now, in all these cases, these last three cases—the Record Press, the Peninsular Telephone Company,

and the Florida Growers Press—does the Tampa branch order the particular items for the express purpose of filling the orders of those three customers?

A. Yes.

Q. And do I understand that generally no other customer is supplied with those particular items?

A. That's right.

Q. How often is a supply of 36 x 48 news print ordered for the purpose of supplying the Record Press?

A. We order it about every six weeks.

Q. How often is a supply of the special addressograph paper ordered for the purpose of filling the orders of the Peninsular Telephone Company?

A. I think that's ordered once a year—not more than twice a year anyway. I think once a year.

Q. And as to the enamel book paper supplied to the Florida Grower Press, how often are supplies of that ordered for the purpose of filling the order of the Florida Grower Press?

A. We haven't had but one shipment of that. That's the shipment we have now.

Q. When did you receive that?

A. About a month ago.

Q. Before that time had you supplied the Florida Grower Press with any special type of paper or other item not used generally by other customers?

A. I can't remember any.

Q. Is the Poinsetta Dairy Company a customer of the Fine Paper Department?

A. Not a regular customer, no Sir. We have sold them one or two items.

Q. What about the Purity Icecream Company in Plant City?

A. No, Sir.

Q. Or the Tampa Better Milk?

A. No, Sir.

Q. Whose duty is it to order new stocks of supplies for the Fine Paper Department?

A. Fred Rawls keeps up with that.

Q. Who actually places the order?

A. Who mails it, or who writes it up?

Q. Who mails it?

A. I put them in the mail.

Q. As I understood your testimony a while ago, you customarily type the requisitions.

A. Yes.

Q. Does Mr. Williford come in contact with your orders?

A. Not the fine paper.

Q. Do you know anything, Mrs. Lewis, about transfers of merchandise from Tampa to Mobile?

A. We have shipped them paper.

Q. How often?

A. Just once in a great while, whenever they run out of an item, they will order it from us.

Q. How was it shipped?

A. The Pan-Atlantic Steamship Company.

Q. You don't remember any other instances of direct shipments from manufacturers to customers?

A. No, I can't think of any. I know there were several more fine paper things—mostly ink—shipped from mill to customer.

Q. Mrs. Lewis, does anyone keep a record of the hours you work?

A. Not that I know of.

Q. Does anyone, so far as you know, keep a record of the hours worked by the other employees?

A. Not that I know of unless maybe it's the boys in the warehouse. Some of them might keep their hours.

Q. Do you keep anybody's hours?

A. No, Sir.

Q. Are you required to sign any receipt on paper when you receive your pay?

A. Yes, Sir.

Q. What do you sign?

A. I don't know. I sign a list that has all the employees names on it.

Q. Do you see what's on the sheet other than your name?

A. No, Sir.

Q. Are you able to ascertain whether there's any other record on the sheet?

A. All we can see is our names.

Q. Are you permitted to see all of the sheet?

A. We're permitted to see the names on the paper. That's all.

Q. How is it handled so that you can't see all of the sheet?

A. Part of the sheet is folded over so there's a blank piece of paper besides the names. We sign outside of our name.

Q. You don't know what you're signing for?

A. No, Sir.

Q. You don't know what your'e signing for.

A. No.

Q. Have you ever asked for permission to examine the sheet?

A. Well, the first time they asked us to sign it I asked what it was all about, and the Cashier told me he didn't know; and that's all.

Q. Do you know whether the other employees are required to sign, under the same circumstances?

A. I think they are all required to sign.

CROSS EXAMINATION

By Mr. Kurz

Q. Mrs. Lewis, do you know whether there's supposed to be on that payroll anything about the amounts the various employees receive?

A. I don't have any idea whatsoever.

Q. You say the Cashier told you he didn't know what it was all about?

A. I asked him why we were supposed to start signing the payroll, and he said he didn't know.

Q. When did you start?

A. It's been several months ago.

Q. Isn't it a fact that you have been signing it ever since you have been employed there?

A. No, Sir.

Q. You didn't sign a receipt for your pay?

A. No.

Q. Do you receive your money in an envelope?

A. Yes.

Q. Is the amount on the envelope?

A. Yes, the amount I receive.

Q. And as far as you know, that's the same amount you sign for on the payroll.

A. Yes.

Q. You are kept pretty busy in the office, aren't you?

A. Yes.

Q. Do you spend any time in the warehouse?

A. None other than taking orders from the office out to the boys in the warehouse and checking and asking—I keep the stock records—asking them why my stock don't correspond with theirs.

Q. Do you have occasion to check items going on to trucks for customers?

A. I bill for the Fine Paper Department. I bill the tickets.

Q. You do that in the office?

A. Yes.

Q. You don't load them on the truck.

A. No, Sir.

Q. Are you there when they load the trucks?

A. No, Sir.

Q. Do you go down to the boatline when the truck goes after items there?

A. No, Sir.

Q. Then how do you know trucks were loaded at the boatline and sent direct to customers?

A. I have heard whoever was in charge—Mr. Atkins—say to send a truck down.

Q. It's all hearsay?

A. I have heard them say.

Q. You don't know personally?

A. Personally I didn't see them go.

Q. When was that that you heard them talk about it?

A. It's been once or twice, since I've been there I've heard them send to do it.

Q. That's all you know, is that once or twice in the four years you have heard somebody talk about it.

A. Yes.

Q. How often do you make shipments to the Sebring American, every two weeks?

A. Every two weeks. We make more shipments than that under this standing order.

Q. What is the standing order?

A. News print.

Q. For how long is that standing order good?

A. Until they notify us not to ship any more.

Q. Was it a regular order?

A. Yes. Sir.

Q. Who sent the order in?

A. The Sebring American. I don't know who signed it.

Q. Do you know whether a salesman calls on them regularly.

A. Yes, we have a salesman that calls on them regularly.

Q. How long have you been making shipments of 125 pounds every two weeks?

A. I couldn't say.

Q. How long will those shipments continue? From now on?

A. Until they notify us not to ship any more.

Q. That shipment goes out every two weeks?

A. Yes.

Q. You said the Record Press has a regular order. What quantity is that for?

A. What quantity? They order it 300 reams at a time.

Q. How much?

A. Three hundred reams at a time, but it's not all shipped to them at once.

Q. How is it shipped to them?

A. As they need it—every week, about forty to sixty reams every week.

Q. Just the quantity they require each week.

A. Yes.

Q. Is that true of the Florida Grower Press—that they order out whatever quantity they need?

A. Yes.

Q. Are the quantities the same all the time?

A. No.

RE-DIRECT EXAMINATION

By Mr. Downing

Q. Who is Mr. Atkins?

A. He's Manager of the Fine Paper Department.

Q. Is he your superior?

A. Yes.

Q. He's one of the men you heard speak of picking up goods at the boat docks for immediate delivery to customers?

A. Yes.

Q. With reference to the order for the Record Press, you referred to an order for 300 reams. Does that relate to the particular size, 36 x 48, of which you testified on direct examination?

A. Yes.

RE-CROSS EXAMINATION

By Mr. Kurz

Q. Is that paper sometimes cut down for other customers?

A. It has been done.

There being no further testimony, the witness was excused, the reading of the deposition and the signature of the witness being waived by the witness and by the parties hereto by their counsel.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE SOUTHERN DISTRICT OF GEORGIA
JACKSONVILLE DIVISION

Edwin R. Williams, Clerk.
Filed Apr. 3, 1941

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

JACKSONVILLE PAPER COM-
PANY, a corporation, et al,

Defendants.

Civil Action
File No. 209-J

TO THE DEFENDANT, JACKSONVILLE PAPER
COMPANY:

Pursuant to Rule 33 of the Rules of Civil Procedure for the District Courts of the United States, you are hereby required to answer in writing and under oath within fifteen days after the delivery hereof to you, the following interrogatories:

3. Of the merchandise ordered for an/or supplied by you to each of your branches during the calendar year 1939 how much of such merchandise was shipped direct to each of said branches by manufacturers from points outside of the State in which such branches were respectively located?

4. Of the merchandise ordered for and/or supplied by you to each of your branches during the calendar year 1940 how much of such merchandise was shipped direct to each of said branches by manufacturers from points outside of the State in which such branches were respectively located?

5. What are the dates and amounts of inter-branch transfers of merchandise since October 24, 1938, where the branches involved were located in different states?

6. What are the dates and amounts of transfers or returns of merchandise since October 24, 1938, from the branches located respectively at Mobile, Alabama, Macon, Georgia, and Savannah, Georgia, to your main warehouse at Jacksonville, Florida, and/or to the plant of Southern Industries Company.

7. What was the amount of sales each month by each of your branches (including sales made by your main office or warehouse direct to its customers) from November 1, 1938, to January 1, 1941?

8. What was the total amount of sales, shipments and/or deliveries made by each of your branches and by your offices or main warehouse from November 1, 1938, to January 1, 1941, to customers located outside the State in which said branches and said warehouse, respectively, are located?

9. Approximately what proportion did the sales in and for interstate commerce, mentioned in answer to Interrogatory No. 8, bear to the total sales of each of said branches?

/s/ Gerard D. Reilly
Solicitor

/s/ Irving J. Levy
Assistant Solicitor in Charge Litigation

/s/ George A. Downing
Regional Attorney

/s/ Charles H. Spitz
Associate Attorney

United States Department of Labor
Attorneys for Plaintiff.

DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Filed Apr. 21, 1941
Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

CLIFFORD G. McGEHEE et al,
co-partners doing business as
SOUTHERN INDUSTRIES, and
JACKSONVILLE PAPER COMPANY,
a corporation,

Defendants.

Civil Action
File No. 209-J

ANSWER OF JACKSONVILLE PAPER COMPANY
TO INTERROGATORIES

Comes now Jacksonville Paper Company, defendant, and
for answer to the interrogatories filed on it in said
cause says:

2. Answering the third and fourth interrogatories,
defendant attached hereto, marked Exhibit "A-1" and
Exhibit "A-2" statements of merchandise shipped direct
to its branches doing an intrastate business only by

manufacturers from points outside of the state in which such branches were respectively located during the calendar years 1939 and 1940.

3. Answering interrogatory Number 5, defendant attaches hereto a statement marked Exhibit "B", showing the dates and amounts of inter-branch transfers in branches doing an intrastate business only since October 24, 1938.

4. Answering interrogatory Number 6, defendant attaches hereto a list of merchandise transferred or returned to Jacksonville Paper Company by the Macon branch, marked Exhibit "C", as called for in said interrogatory, and further answers said interrogatory by saying that no merchandise was returned or transferred by said Macon branch to Southern Industries Company.

5. Answering interrogatory Number 7, defendant attaches hereto, marked Exhibit "D", a statement as called for in said interrogatory.

6. Answering interrogatory Number 8, defendant attaches hereto a statement, marked Exhibit "E", showing total sales by branches doing an intrastate business only to customers beyond the limits of the state in which said branch is located, during the years 1939 and 1940.

7. Answering the ninth interrogatory, defendant attaches hereto a statement showing the proportion of sales mentioned in answer to interrogatory Number 8 to the total sales of said branches, such statement being marked Exhibit "F".

JACKSONVILLE PAPER COMPANY
By M. R. McGehee, /s/

STATE OF FLORIDA,]
COUNTY OF DUVAL.]

On this day personally appeared before me, the undersigned authority, M. R. McGEHEE, who being by me first duly sworn says that he is Secretary-Treasurer of Jacksonville Paper Company, defendant in the above cause; that he has read the foregoing interrogatories and that the answers to said interrogatories are true.

/S/ M. R. McGehee.

Sworn to and subscribed before me this 19th day of April A. D. 1941.

/S/ A. S. Reinoehl.

Notary Public, in and for the State of Florida at Large.

My Commission expires March 29, 1944.

(SEAL)

Copy of the foregoing Answer to Interrogatories received this 19th day of April, A. D., 1941.

Attorney for Plaintiff.

EXHIBITS A-1 (one page)
 A-2 (one page)
 B (3 pages)
 C (one page)
 D (3 pages)
 E (2 pages)
 F (1 page)

(Answer of Jacksonville Paper Company to Interrogatories)

MERCHANDISE ORDERED FOR OR SUPPLIED TO INTRA-STATE BRANCHES AND SHIPPED TO SAID BRANCHES BY MANUFACTURERS FROM POINTS OUTSIDE OF THE STATE IN WHICH THE BRANCHES ARE OPERATED DURING CALENDAR YEAR OF 1939.

Macon, Georgia	\$ 99,775.99
Miami, Florida	226,282.75
Orlando, Florida	17,086.88
St. Petersburg, Florida	19,225.12
Tampa & Lakeland, Florida	249,703.51
West Palm Beach Florida	13,342.49
	<hr/>
	625,416.24

EXHIBIT "A-1"

MERCHANDISE ORDERED FOR OR SUPPLIED TO INTRA-STATE BRANCHES AND SHIPPED TO SAID BRANCHES BY MANUFACTURERS FROM POINTS OUTSIDE OF THE STATE IN WHICH THE BRANCHES ARE OPERATED DURING CALENDAR YEAR OF 1940.

Macon, Georgia	\$119,587.08
Miami, Florida	252,679.06
Orlando, Florida	22,449.39
St. Petersburg, Florida	36,978.86
Tampa & Lakeland, Florida	259,038.71
West Palm Beach, Florida	15,908.04
	<hr/>
	\$706,641.14

EXHIBIT A-2

Interbranch transfers 1939 and 1940 to or from Intra-state branches where branches involved were in different states.

2-7-39	Macon to Jacksonville	.79
8-31-39	Savannah to Tampa	1.90
2-20-40	Macon to Tallahassee	6.94
3-20-40	Macon to Florida	1.49
4-24-40	Macon to Jacksonville	25.74

6-20-40	Macon to Jacksonville	61.36
6-28-40	Miami to Savannah	3.89
8-31-40	Macon to Jacksonville	107.50
8-31-40	Macon to Jacksonville	5.00
9-4-40	Tampa to Savannah	3.26
10-29-38	Macon to Jacksonville	3.08
11-29-38	Do	3.85
11-1-38	Savannah to Orlando	2.35
11-18-38	Savannah to Miami	25.34
12-6-38	Macon to Jacksonville	117.66
12-19-38	Macon to Tallahassee	40.62
1-16-39	Macon to Jacksonville	5.47
1-30-39	Macon to Tallahassee	1.60
1-26-39	Savannah to Tampa	5.65
2-18-39	Macon to Tampa	12.55
2-2-39	Savannah to Tampa	16.25
2-20-39	Do	14.52
3-4-39	Macon to Tampa	3.78
3-14-39	Macon to Jacksonville	9.60
4-22-39	Mobile to Tampa	48.36
4-14-39	Savannah to Tampa	6.15
4-21-39	Do	8.85
5-6-39	Macon to Jacksonville	6.72
5-6-39	Do	17.25
5-25-39	Do	1.15
6-7-39	Macon to Mobile	9.50
7-1-39	Macon to Orlando	8.30
6-8-39	Savannah to Tampa	20.51
7-9-39	Macon to Jacksonville	14.50
7-12-39	Macon to Tampa	29.71
7-18-39	Macon to Jacksonville	8.90
7-14-39	Mobile to Tampa	14.13
7-12-39	Savannah to Tampa	32.04
7-19-39	Do	2.28
7-7-39	Macon to Jacksonville	20.08
7-24-39	Macon to Tallahassee	2.04
8-3-39	Macon to Jacksonville	5.34
8-16-39	Do	13.91
8-23-39	Do	39.79
8-29-39	Macon to Tallahassee	9.29

8-21-39	Miami to Tallahassee	1.33
8-18-39	Mobile to Macon	6.74
8-24-39	Savannah to Miami	60.57
8-26-39	Do	2.37
9-12-39	Macon to Jacksonville	9.25
9-19-39	Do	127.05

EXHIBIT "B"

9-19-39	Macon to Tallahassee	12.74
9-25-39	Do	34.16
9-26-39	Macon to Mobile	1.67
9-28-39	Macon to Tallahassee	11.75
10-2-39	Macon to Tallahassee	5.49
10-4-39	Macon to Orlando	3.00
10-10-39	Macon to Tallahassee	6.13
10-24-39	Macon to Jacksonville	14.74
10-30-39	Do	10.60
11-1-39	Do	6.96
11-9-39	Macon to Tallahassee	29.40
11-17-39	Do	2.87
12-19-39	Macon to Jacksonville	4.89
12-20-39	Savannah to Miami	24.60
12-5-39	Tampa to Mobile	245.66
1-12-40	Macon to Jacksonville	42.13
1-17-40	Do	6.48
1-20-40	Macon to Mobile	9.46
12-28-39	Mobile to Macon	64.69
12-20-39	Mobile to Tampa	12.38
1-12-40	Do	11.72
1-5-40	Savannah to Miami	4.73
1-13-40	Savannah to Tampa	13.74
1-30-40	Macon to Jacksonville	6.62
2-8-40	Do	4.97
2-8-40	Do	2.38
2-13-40	Do	19.35
2-20-40	Do	6.79
2-12-40	Macon to Mobile	136.68
2-15-40	Do	20.94
1-30-40	Macon to Tallahassee	11.93

2-1-40	Do	10.70
2-13-40	Do	.99
2-2-40	Tallahassee to Macon	9.60
1-31-40	Tampa to Mobile	46.13
1-31-40	Do	232.25
3-4-40	Macon to Jacksonville	10.94
3-8-40	Macon to Mobile	31.64
3-4-40	Macon to Tallahassee	17.22
3-5-40	Do	21.96
3-8-40	Tampa to Mobile	166.65
3-25-40	Do	108.77
4-11-40	Macon to Jacksonville	13.13
4-12-40	Do	.67
4-29-40	Do	7.50
4-13-40	Macon to Orlando	6.27
4-3-40	Macon to Mobile	31.52
4-2-40	Savannah to Tampa	7.00
4-10-40	Do	11.29
4-15-40	Tampa to Savannah	3.74
5-7-40	Macon to Jacksonville	7.40
5-11-40	Do	4.80
5-28-40	Do	10.90
5-30-40	Macon to Tallahassee	31.66
5-14-40	Mobile to Macon	168.66
5-14-40	Do	36.33
6-14-40	Macon to Tallahassee	7.55
6-14-40	Savannah to Tampa	4.76
7-12-40	Macon to Jacksonville	13.75
7-31-40	Do	1.18
7-24-40	Savannah to Tampa	4.92
8-7-40	Macon to Jacksonville	4.32
8-13-40	Do	13.06
8-14-40	Macon to Mobile	32.80
8-16-40	Savannah to Tampa	4.91
8-9-40	Macon to Jacksonville	9.86
8-31-40	Do	18.60
9-21-40	Do	2.25
9-27-40	Do	124.31
9-5-40	Macon to Tallahassee	26.92
9-7-40	Do	16.22

9-23-40	Tampa to Mobile	120.00
10-30-40	Macton to Jacksonville	18.15
10-10-40	Macon to Tampa	5.90
10-25-40	Mobile to Macon	83.95
10-29-40	Savannah to Tampa	7.18
10-2-40	Tallahassee to Macon	18.80
10-15-40	Do	19.36
11-6-40	Macon to Jacksonville	5.73
11-14-40	Do	11.46
11-15-40	Do	3.34
11-8-40	Macon to Mobile	68.98
11-14-40	Do	1.45
11-23-40	Do	22.55
11-1-40	Tallahassee to Macon	8.30
12-31-40	Savannah to Miami	19.02
12-30-40	Tampa to Mobile	15.09
12-30-40	Do	57.56

MERCHANDISE TRANSFERRED OR RETURNED TO JACKSONVILLE BY MACON, GEORGIA, FROM OCTOBER 24TH 1938 TO DECEMBER 31, 1940.

2-7-39	Macon to Jacksonville	.79
4-24-40	"	25.74
6-20-40	"	61.36
8-31-40	"	107.50
8-31-40	"	5.00
10-29-38	"	3.08
12-6-38	"	117.66
1-16-39	"	5.47
3-14-39	"	9.60
5-6-39	"	6.72
5-6-39	"	17.25
5-25-39	"	1.15
7-9-39	"	14.50
7-18-39	"	8.90
7-9-39	"	20.08
8-3-39	"	5.34
8-16-39	"	13.91

8-23-39	"	39.79
9-12-39	"	9.25
9-19-39	"	127.05
10-24-39	"	14.74
10-30-39	"	10.60
11-9-39	"	6.96
12-19-39	"	4.89
1-12-40	"	42.13
1-17-40	"	6.48
1-30-40	"	6.62
2-8-40	"	4.97
2-8-40	"	2.38
2-13-40	"	19.35

EXHIBIT "C"

2-20-40	"	6.79
3-4-40	"	10.94
4-11-40	"	13.13
4-12-40	"	.67
4-29-40	"	7.50
5-7-40	"	7.40
5-11-40	"	4.80
5-28-40	"	10.90
7-12-40	"	13.75
7-31-40	"	1.18
8-7-40	"	4.32
8-13-40	"	13.06
8-9-40	"	9.86
8-31-40	"	18.60
9-21-40	"	2.25
9-27-40	"	124.31
10-30-40	"	16.15
11-6-40	"	5.73
11-14-40	"	11.46
11-15-40	"	3.34
11-29-38	"	3.85

TOTAL SALES BY BRANCHES FOR NOVEMBER AND DECEMBER 1938.

	Jacksonville, Fla.	Fla. Paper Co.	Macon, Ga.	Miami, Fla.
Nov.	57,792.90	12,558.86	11,586.51	34,218.80
Dec.	56,304.92	11,229.60	11,375.60	46,606.75
	114,097.82	23,788.46	22,962.11	80,825.55

	Mobile, Ala.	Orlando, Fla.	Pensacola, Fla.	St. Petersburg, Fla.
Nov.	16,211.04	8,124.23	3,827.36	7,041.89
Dec.	15,405.14	9,458.49	4,735.02	6,888.72
	31,616.18	17,582.72	8,612.38	13,930.61

	Savannah, Ga.	Tallahassee, Fla.	Lakeland & Tampa, Fla.	W. Palm Beach, Fla.
Nov.	17,651.04	7,893.29	36,127.89	7,443.16
Dec.	15,535.75	10,390.41	44,801.52	7,489.75
	33,186.79	18,283.70	80,929.41	14,932.91

TOTAL SALES FOR NOVEMBER AND DECEMBER 1938:

Jacksonville, Fla.	114,097.82
Florida Paper Co.	23,788.46
Macon Georgia	22,962.11
Miami, Fla.	80,825.55
Mobile, Ala.	31,616.18
Orlando, Fla.	17,582.72
Pensacola, Fla.	8,612.38
St. Petersburg, Fla.	13,930.61
Savannah, Ga.	33,186.79
Tallahassee, Fla.	18,283.70
Lakeland & Tampa, Fla.	80,929.41
West Palm Beach, Fla.	14,932.91

TOTAL: 460,748.64

TOTAL SALES BY BRANCHES FOR CALENDAR YEAR 1939.

	Jax'ville, Fla.	Fia. Paper Co.	Macon, Ga.	Miami, Fla.
Jan.	54,754.21	14,021.60	12,423.52	46,293.10
Feb.	52,398.01	11,371.43	15,137.71	42,920.23
Mar.	55,142.60	13,691.26	12,595.37	41,600.46
Apr.	52,795.00	17,337.65	14,061.34	32,906.56
May	55,140.98	13,895.72	16,529.72	29,186.49
June	55,962.05	17,248.84	17,172.84	32,765.73
July	41,932.64	11,106.19	14,715.73	21,450.35
Aug.	59,340.32	13,768.66	18,526.22	26,216.08
Sept.	63,323.08	17,139.39	24,022.70	33,304.31
Oct.	57,791.51	14,344.84	19,067.87	36,383.73
Nov.	53,076.55	14,525.77	15,602.30	41,001.74
Dec.	60,015.35	12,921.92	15,143.16	51,240.56
	\$661,682.30	171,372.77	194,998.98	435,269.34

	Mobile, Ala.	Orlando, Fla.	Pensacola, Fla.	St. Petersburg, Fla.
Jan.	17,649.39	9,318.22	4,201.54	7,892.95
Feb.	15,358.80	8,913.90	3,801.70	7,646.64
Mar.	19,788.51	10,081.07	5,063.08	7,884.62
Apr.	15,722.80	8,608.60	4,584.38	6,372.27
May	19,366.74	8,312.43	4,531.46	5,976.07
June	17,276.24	7,415.35	4,938.49	4,216.89
July	19,193.20	5,781.85	4,469.08	3,564.24
Aug.	19,129.15	6,445.70	3,788.80	4,276.67
Sept.	26,312.21	9,423.86	5,340.10	5,731.66
Oct.	17,363.18	8,658.13	3,877.90	5,834.06
Nov.	19,838.20	9,320.58	5,295.47	7,766.50
Dec.	19,965.16	10,531.10	4,345.32	7,954.48
	226,963.53	102,810.79	54,237.32	75,017.05

	Savannah, Ga.	Tallahassee, Fla.	Lakeland & Tampa, Fla.	W. Palm Beach, Fla.
Jan.	17,481.26	9,317.05	43,072.66	7,709.55
Feb.	16,078.86	8,731.43	39,523.82	7,647.34
Mar.	18,987.07	9,997.51	39,526.21	8,611.11
Apr.	17,323.56	10,834.88	36,406.33	6,836.61
May	18,133.97	10,317.74	34,418.41	4,969.74
June	17,243.55	9,960.95	33,319.80	3,844.48
July	14,542.02	10,506.90	26,632.46	3,852.62
Aug.	17,426.21	10,701.13	36,436.82	3,604.80
Sept.	22,374.26	12,938.66	41,225.81	6,379.64
Oct.	21,442.24	13,315.68	36,913.07	5,917.08
Nov.	16,101.51	10,369.44	43,401.09	11,662.11
Dec.	15,651.81	8,275.12	45,979.65	9,392.18
	212,786.32	125,266.49	456,856.13	80,428.26

Jacksonville, Fla.	661,682.30
Fla. Paper Co.	171,372.77
Macon, Ga.	194,998.98
Miami, Fla.	435,269.34
Mobile, Ala.	226,963.53
Orlando, Fla.	102,810.79
Pensacola, Fla.	54,237.32
St. Petersburg, Fla.	75,017.05
Savannah, Ga.	212,786.32
Tallahassee, Fla.	125,266.49
Lakeland & Tampa, Fla.	456,856.13
West Palm Beach, Fla.	80,428.26

2,797,689.28

TOTAL SALES BY BRANCHES FOR CALENDAR YEAR 1940.

	Jax'ville, Fla.	Fla. Paper Co.	Macon, Ga.	Miami, Fla.
Jan.	65,021.08	16,025.43	19,161.88	52,805.86
Feb.	60,005.49	13,427.42	15,930.57	54,526.82
Mar.	66,912.71	15,909.21	17,002.15	49,719.01
April	70,515.93	17,019.20	19,298.84	40,710.20
May	73,908.13	17,135.91	19,609.24	38,694.08
June	58,784.52	13,010.90	17,181.19	26,930.95
July	53,303.33	15,535.60	16,877.29	30,386.73
Aug.	60,271.21	16,173.79	20,743.88	29,573.36
Sept.	68,339.10	17,149.64	18,378.81	38,774.15
Oct.	74,440.40	15,744.77	20,939.69	44,214.14
Nov.	64,852.43	16,276.66	18,785.35	43,344.34
Dec.	71,237.23	20,617.52	17,478.86	53,483.53
	787,591.56	194,026.05	221,387.75	503,163.17

	Mobile, Ala.	Orlando, Fla.	Pensacola, Fla.	St. Petersburg, Fla.
Jan.	19,044.06	10,095.95	4,846.44	10,303.52
Feb.	19,844.36	10,240.41	4,167.09	8,666.31
Mar.	20,827.20	9,997.39	4,993.95	8,921.24
April	21,951.47	9,554.04	5,552.38	7,054.03
May	24,188.17	9,346.81	8,032.06	6,981.82
June	19,120.72	6,585.95	5,268.28	4,201.97
July	20,326.26	7,461.13	7,279.93	4,306.43
Aug.	23,893.51	8,509.29	7,837.80	3,914.59
Sept.	23,388.01	10,645.98	8,365.44	5,310.15
Oct.	24,102.54	11,138.64	7,377.86	6,342.65
Nov.	21,449.34	11,278.25	7,870.99	8,181.40
Dec.	20,591.72	12,927.42	6,176.36	7,395.46
	258,727.36	117,781.26	77,768.58	81,579.57

	Savannah, Ga.	Tallahassee, Fla.	Lakeland & Tampa, Fla.	W. Palm Beach, Fla.
Jan.	19,039.86	10,687.26	45,633.69	9,576.20
Feb.	15,840.36	11,011.71	42,354.68	10,655.87
Mar.	17,575.11	11,217.45	46,319.96	8,821.44
April	20,462.22	13,281.91	41,837.97	7,880.47
May	22,064.42	12,441.81	45,448.96	6,937.42
June	17,747.25	11,292.61	31,306.24	4,110.81
July	18,294.63	14,862.06	32,425.30	4,310.89
Aug.	20,937.45	15,797.36	38,369.66	4,738.81
Sept.	20,318.23	14,646.62	43,515.38	5,765.94
Oct.	22,261.38	13,488.06	42,028.38	7,059.66
Nov.	24,730.42	12,648.77	49,137.55	12,168.54
Dec.	17,931.56	11,169.66	43,700.06	9,403.67
	217,962.89	152,545.30	502,077.83	91,429.72

Jacksonville, Fla.	787,591.56
Fla. Paper Co.	194,026.05
Macon, Ga.	221,387.75
Miami, Fla.	503,163.17
Mobile, Ala.	258,727.36
Orlando, Fla.	117,781.26
Pensacola, Fla.	77,768.58
St. Petersburg, Fla.	81,579.57
Savannah, Ga.	217,962.89
Tallahassee, Fla.	152,545.30
Lakeland & Tampa, Fla.	502,077.83
West Palm Beach, Fla.	91,429.72

3,206,041.04

GOODS SOLD BY INTRA-STATE BRANCHES TO
CUSTOMERS BEYOND THE LIMITS OF THE
STATE IN WHICH THE BRANCH OPERATES,
DURING 1939.

MACON, GEORGIA

January 29th	J. S. Shaw Company, Quincy, Florida	\$1.69*
June 7th	Dement Printing Co., Meridian, Miss.	9.50*
Sept. 25th	Pfeiffer Printing Co., Pensacola, Fla.	1.67*
Nov. 1st	Dewberry Eng. Co., Birmingham, Ala.	6.96*
November 16th	Enterprise Recorder, Madison, Fla.	2.87*
Dec. 13th	Williston Sun, Williston, Fla.	25.66*
Dec. 19th	Williston Sun, Williston, Fla.	4.89*
Aug. 9th	Aultman Prtg. Co., Anderson, S. C.	1.00
Sept. 13th	Ennis Tag Co., Ennis, Texas	7.04
Sept. 13th	Ennis Tag Co., Ennis, Texas	7.01
Sept. 14th	Ennis Tag Co., Ennis, Texas	6.97

Sept. 14th	Ennis Tag Co., Ennis, Texas	7.01
Sept. 14th	Ennis Tag Co., Ennis, Texas	14.52
Nov. 14th	Percy Creamery Co., Tuscaloosa, Ala.	13.20
July 10th	Phoenix City Herald, Phoenix City, Ala.	8.25
Nov. 30th	Phoenix City Herald, Phoenix City, Ala.	3.60
Nov. 14th	Robertson Company, Daytona, Ala.	1.45
Dec. 30th	H. & W. B. Drew Company, Jacksonville, Fla.	42.13*
		<hr/> \$165.42

*These items not included in Macon sales but were charged to Jacksonville and included in Jacksonville sales.

MIAMI, FLORIDA

Shipments to Nassau, N. P., during 1939 \$12,239.87

ORLANDO, FLORIDA

None

ST. PETERSBURG, FLORIDA

None

EXHIBIT "E"

WEST PALM BEACH, FLORIDA

None

TAMPA, FLORIDA

Aug. 8th	Times Enterprise, Thomasville, Ga.	3.15*
May 31st	T. S. Arnold, Chautauqua, N. Y.	1.54
		<hr/> \$4.69

GOODS SOLD BY INTRA-STATE BRANCHES TO
CUSTOMERS BEYOND THE LIMITS OF THE
STATE IN WHICH THE BRANCH OPERATES,
DURING 1940.

MACON, GEORGIA

Jan. 27th	Leesburg Publ. Co., Leesburg, Fla.	6.62*
Jan. 20th	Evergreen Couran, Evergreen, Ala.	9.46*
Feb. 20th	Leesburg Publ. Co., Leesburg, Fla.	6.79*
Feb. 17th	Daggett Prtg. Co., Charleston, S. C.	15.56*
Apr. 29th	H. & W. B. Drew Co., Jacksonville, Fla.	7.50*
May 29th	Chipola Publ. Co., Marianna, Fla.	31.66*
May 11th	Arnold Printing Co., Jacksonville, Fla.	4.80*
June 14th	Daily Democrat, Tallahassee, Fla.	7.55*

July 30th	H. & W. B. Drew Co., Jacksonville, Fla.	1.18*
Sept. 28th	Kenneth Griffiths, New York, N. Y.	.86
October 9th	Quality Printing Co., St. Pete., Fla.	5.90*
Nov. 23rd	Alabama Baptist Home, Troy, Ala.	22.55*
Mar. 29th	A. E. Allen, Lanette, Ala.	3.32
Apr. 23rd	A. E. Allen, Lanette, Ala.	5.95
Sept. 28th	Blocker Prtg. Co., Charleston, S. C.	3.76
Mar. 12th	W. T. Cook, Lanette, Ala.	4.11
Mar. 12th	D. J. Crowder, Lanette, Ala.	5.17
Apr. 23rd	Do Do	12.15
Mar 28th	Phoenix City Herald, Phoenix City, Ala.	5.17
Apr. 29th	Do Do	3.45
June 14th	" "	2.27
June 17th	" "	4.48

June 18th	"	"	7.55
June 22nd	"	"	4.32
June 25th	"	"	1.96
Aug. 6th	"	"	1.00
Aug. 15th	"	"	1.14
Sept. 10th	"	"	.98
Oct. 3rd	"	"	1.62
Oct. 18th	"	"	.35
July 24th			
Warren Roberts, Highland, N. C.			2.64
March 29th			
S. E. Thrower, Lanette, Ala.			1.65
Apr. 23rd	"	"	6.15
			<hr/>
			\$199.63

*These items were not included in Macon sales but were charged to Jacksonville and were included in Jacksonville sales.

MIAMI, FLORIDA

Shipments to Nassau N. P. during 1940 \$13,422.26

ORLANDO, FLORIDA

None

ST. PETERSBURG, FLORIDA

None

TAMPA, FLORIDA

None

WEST PALM BEACH, FLORIDA

None

EXHIBIT "F"

PROPORTION OF INTERSTATE SALES, RETURNS TO OUT OF THE STATE MILLS, AND OTHER SHIPMENTS BEYOND THE STATE LINE OF THE STATE IN WHICH THE INTRASTATE BRANCHES ARE OPERATED.

1939

	Macon, Ga.	Miami, Fla.	Orlando, Fla.
Total sales	194,998.98	435,269.34	102,810.79
Interstate Sales	165.42		
Returns to Mills			40.14
Nassau, N. P.		12,239.87	
%	.0008	.0281	.0003

1939

	St. Petersburg, Fla.	Lakeland & Tampa, Florida	West Palm Bch., Fla.
Total Sales	75,017.05	456,856.13	80,428.26
Interstate Sales		4.69	
Returns to Mills	54.72	90.25	94.79
%	.0007	.0002	.0012

1940

	Macon, Ga.	Miami, Fla.	Orlando, Fla.
Total Sales	221,387.75	503,163.17	117,781.26
Interstate Sales	199.63		
Returns to Mills			15.00
%	.0009	.0246	.0001

1940

	St. Petersburg, Fla.	Lakeland & Tampa, Florida	West Palm Bch., Fla.
Total Sales	81,579.57	502,077.83	91,429.72
Interstate Sales			
Returns to Mills	154.48	53.41	
%	.0019	.0001	.0000

Total Sales Sales for 1939 and 1940 on the above branches

2,862,599.85

Total shipments to points outside the state in which branches are operated

27,934.16

%

.0098

Total shipments beyond states not including shipments to Nassau

2,272.03

%

.0008

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT
OF FLORIDA

JACKSONVILLE DIVISION

No. 209-J

Filed July 24, 1941
Edwin R. Williams, Clerk

PHILIP B. FLEMING, Administrator of the
Wage and Hour Division,
United States Department of Labor,
Plaintiff,

versus

CLIFFORD G. McGEHEE, M. R. McGEHEE, and
CLYDE McGEHEE, co-partners, doing business
as SOUTHERN INDUSTRIES COMPANY,
and JACKSONVILLE PAPER COMPANY,
a corporation organized and existing under
the laws of the State of Florida,
Defendants.

The Court having heard the testimony and having received briefs of counsel for the respective parties, makes the following

FINDINGS OF FACT

From the admissions in the record the Court finds:

1.

That the employees of the Southern Industries Company and the Jacksonville Paper Company, at their main branches at Tallahassee, Pensacola, Mobile, and Savannah, are covered by the Fair Labor Standards Act, and that the defendants at the above-named places have failed to comply with material and substantial provisions of the Act, at least prior to the filing of the complaint herein, and pursuant to said admissions the Court, during the

progress of the trial, announced that an injunction should issue against the defendants as same relate to their activities at the points named.

2.

The only question remaining for consideration by the Court was whether or not the employees of the Jacksonville Paper Company at the following branch houses were subject to the terms and provisions of the Wage and Hours Law; to wit: Tampa Paper Company, Tampa, Lakeland Paper Company, Lakeland, Central Paper Company, West Palm Beach, Everglades Paper Company, Miami, Pinellas Paper Company, St. Petersburg, all in the State of Florida, and Macon Paper Company, Macon, in the State of Georgia.

3.

It is stipulated that the operations of the Tampa Paper Company, at Tampa, Florida, would be considered as typical of the operations of the other disputed branches.

4.

It does not appear that either of the branch houses made sales in interstate commerce or, that is, shipped its goods, ware, and merchandise from its warehouse to any point outside the State of Florida.

5.

It does not appear that either of the said branch houses was engaged in the production of goods for commerce or in the manufacture of goods.

6.

The business of the Jacksonville Paper Company is largely conducted from its main office in Jacksonville and it is a highly intergrated business.

7.

It appears that the employees of the defendant at the branch houses were employed and supervised by the

manager of the branch houses and that the said employees worked only for the branch houses and performed no direct service for the parent organization in Jacksonville.

8.

It appears that considerable quantities of supplies sold by said branch houses were shipped through interstate commerce from out of the State of Florida to said branch houses, and that the said commodities so shipped by ordinary agencies of interstate transportation came to rest in the warehouses of the disputed branches, from which warehouses said commodities were sold and distributed to the customers of said branch houses

9.

That occasional shipments of goods not kept in stock were ordered for a customer from out the State and direct shipments of same made to the customer, but that such sales were of such small quantities, proportionate to the volume of business done, as to be inconsequential and not sufficient upon which a predicate could be laid for determining that the employees of said company's branch houses were engaged in interstate commerce under the doctrine of de minimus.

CONCLUSION OF LAW

I make the following conclusions of law:

1.

That it is the business that the employee is engaged in rather than the business of the employer that determines whether the employee is under the Act or not.

2.

That for a merchant, who is not engaged in the production of goods for commerce or manufacture, to come within the provisions of the Act and thereby place his employees under the Act, such merchant must make substantial sales in interstate commerce, or, that is, must

ship goods into other States, or must make sales with knowledge that shipment, sale, or delivery in interstate commerce is intended. See paragraphs 15, 16, 17, and 18, case of *GERDERT vs. CERTIFIED POULTRY & EGG CO., INC.*, 38 Fed. Sup. 964. (Text pages 974-975.)

Section 215 (a) (2) of the Act attempts employees of a retailer "the greater part of whose selling or service is in intrastate commerce". If the greater part of a retailer's selling or service is in interstate commerce he is under the Act. Section 315 of the Act makes it unlawful for any person to sell goods with knowledge that shipment, sale, or delivery in interstate commerce is intended without having complied with the Act.

Therefore, the criterion that Congress fixed for one not engaged in the production of goods for commerce is in the sale, shipment, or delivery of goods in interstate commerce.

3.

That after the interstate transportation has ended and the interstate carrier has delivered the goods to the employees of the consignee, interstate commerce has come to an end and the transportation of the goods from the freight depot to the store is a transportation by the consignee, which is entirely local in character. If the delivery were being made by the employees of the carrier, such employees would, of course, be in interstate commerce, but the same would not be true when the goods have been delivered to the consignee of his employees.

4.

For the reasons set forth in my opinion in the case of *GERDERT vs. CERTIFIED POULTRY & EGG Co., INC.*, 38 Fed. Sup. 964, which I now affirm and make a part of my conclusions herein, I am of the opinion that no injunction should issue against the defendants relating to the employees of said defendants in said disputed branch houses, but that an injunction should issue against

the defendants restraining them from violating the provisions of said Fair Labor Standards Act insofar as it affects the employees of said defendants in all employment other than in the disputed branch houses above enumerated.

The Court announced early in the trial of this case that an injunction would issue against the defendants for violations committed prior to the filing of the complaint in all other than the branch houses, and much proffered testimony was rejected by the Court dealing with the business of the defendants at points other than in the branch houses, and the Court does not deem it fair and just to make definite or specific findings on particular phases of the practices of the company at those places of business other than at the disputed branches. If it were error then to so hold, it would be more grave error to now otherwise hold after the rejection of evidence dealing with particular practices at points other than at the disputed branches.

Let an appropriate order be prepared and submitted.

/s/ Curtis L. Waller,

July 23, 1941.

United States District Judge.

Filed Aug. 30, 1941.

Edwin R. Williams, Clerk.

IN THE DISTRICT COURT
OF THE UNITED STATE FOR THE
SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
DEPARTMENT OF LABOR,

Plaintiff,

Civil Action

File No. 209-J

v.

JACKSONVILLE PAPER COMPANY, a
corporation; and DELIA CRAWFORD
McGEHEE, RAY SUTTON McGEHEE,
and C. C. McGEHEE, and M. R. Mc-
GEHEE and RAY SUTTON McGEHEE,
as Trustees for ELLEN JOSEPHINE
McGEHEE CAVERT, KATHLEEN
MAE McGEHEE, THOMAS RIVES
McGEHEE, CLIFFORD G. McGEHEE,
Jr., FRANK SUTTON McGEHEE,
and BERRYLIN MAE McGEHEE, co-
partners doing business as SOUTHERN
INDUSTRIES COMPANY, and CLIF-
FORD G. McGEHEE,

Defendants.

JUDGMENT

This cause having been tried by the Court without a jury, the Court having heard the evidence, the arguments of counsel; and having considered the briefs submitted by the parties, and sufficient reason therefor appearing, upon consideration, IT IS, THEREFORE,

I.

ORDERED, ADJUDGED AND AGREED That the defendants, Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Josephine Mc-

Gehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee, their officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in their respective behalves and interests, be and they hereby are severally permanently enjoined and restrained from:

(1) Violating any of the provisions of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C., Title 29, Sec. 201, et seq.), hereinafter referred to as the Act, and more particularly from:

(2) During the period from the date of this judgment to October 24, 1945, paying any of their employees, engaged in commerce or in the production of goods for commerce, employed at Jacksonville, Florida, or elsewhere, wages at rates less than thirty cents (30c) an hour; or, after October 23, 1945, paying any of their said employees wages at rates less than forty cents (40c) an hour, or the rate (not less than thirty cents (30c) an hour) prescribed in any applicable order of the Administrator of the Wage and Hour Division, United States Department of Labor, issued pursuant to the provisions of Section 8 of the Act, whichever is lower; or, at any time paying any of their said employees (except those for whom special certificates have been issued and are in effect) wages at rates less than the rate (not in excess of forty cents (40c) an hour) prescribed in any applicable order of the said Administrator issued pursuant to the provisions of Section 8 of the Act, including the Wage Order for the Converted Paper Products Industry, promulgated by the Administrator, which became effective June 30, 1941 Regulations, Part 598, Title 29, Chapter V, Code of Federal Regulations); or, at any time paying to any of their said employees employed pursuant to a special certificate issued and in effect pursuant to the provisions of Section 14, of the

Act, wages at a rate less than the rate prescribed in such special certificate, contrary to the provisions of Sections 6 and 15 (a) (2) of the Act;

(3) Employing any of their said employees for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed, contrary to the provisions of Sections 7 and 15 (a) (2) of the Act;

(4) Shipping, delivering, or selling, with knowledge that shipment, delivery or sale thereof in commerce, as such term is defined in the Act, is intended, any goods produced in their place of business at Jacksonville, Florida, or elsewhere in the production of which, or in any process or occupation necessary to the production of which, any employee was employed at wages less than the rates prescribed in Paragraph (2) of this judgment, or in violation of any regulation, order or special certificate issued by the said Administrator pursuant to Section 14 of the Act;

(5) Shipping, delivering, or selling, with knowledge that shipment, delivery or sale thereof in commerce, as such term is defined in the Act, is intended, any goods produced in their place of business at Jacksonville, Florida, or elsewhere in the production of which, or in any process or occupation necessary to the production of which any employee was employed in any workweek for a number of hours greater than the number prescribed in Paragraph (3) of this judgment unless such employee received compensation for his employment in excess of such hours in such workweek at a rate not less than one and one-half times the regular rate at which he was employed;

(6) Failing to make, keep and preserve records of the persons employed by them and of the wages, hours

and other conditions and practices of employment maintained by them as prescribed by the regulations, as amended, of the said Administrator issued pursuant to Section 11 (c) of the Act, which regulations, and amendments thereto, are known as Title 29, Chapter V, Code of Federal Regulations, Part 516, or by any amendments to such regulations, and particularly, but not in limitation of the provisions of this paragraph, from failing to make, keep and preserve records of the hours worked each workday and each workweek by each of their said employees and of the total wages paid to each of their said employees for each workweek.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the defendant, Jacksonville Paper Company, a corporation, its officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in its behalf and interest, be and they hereby are permanently enjoined and restrained from:

(1) Violating any of the provisions of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C., Title 29, Sec. 201 et seq.), hereinafter referred to as the Act, as hereinafter more particularly set forth, to-wit:

(2) During the period from the date of this judgment to October 24, 1945, paying any of its employees, engaged in commerce or in the production of goods for commerce, employed at its main office and warehouse at Jacksonville, Florida, and as its following branches: Florida Paper Company, Jacksonville, Florida; Capital Paper Company, Tallahassee, Florida; Pensacola Paper Company, Pensacola, Florida; Partin Paper Company, Mobile, Alabama, and Atlantic Paper Company, Savannah, Georgia, wages at rates less than thirty cents (30c) an hour; or after October 23, 1945, paying any of its said employees wages at rates less than forty cents (40c) an hour, or the rate (not less than thirty cents

(30c) an hour) prescribed in any applicable order of the Administrator of the Wage and Hour Division, United States Department of Labor, issued pursuant to the provisions of Section 8 of the Act, whichever is lower; or, at any time paying any of its said employees (except those for whom special certificates have been issued and are in effect) wages at rates less than the rate (not in excess of forty cents (40c) an hour) prescribed in any applicable order of the said Administrator issued pursuant to the provisions of Section 8 of the Act; or, at any time paying to any of its said employees employed pursuant to a special certificate issued and in effect pursuant to the provisions of Section 14 of the Act, wages at a rate less than the rate prescribed in such special certificate, contrary to the provisions of Sections 6 and 15 (a) (2) of the Act;

(3) Employing any of its said employees for a workweek longer than forty (40) hours unless such employees receives compensation for his employment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed, contrary to the provisions of Sections 7 and 15 (a) (2) of the Act;

(4) Transporting, offering for transportation, shipping, delivering or selling in interstate commerce, as such term is defined in the Act, any goods produced by the co-partner defendants, trading as Southern Industries Company in their said place of business at Jacksonville, Florida, or elsewhere, in the production of which or in any process or occupation necessary to the production of which, any employee of the said co-partner defendants was employed at wages less than the rates prescribed in paragraph I (2) of this judgment, or in violation of any regulation, order or special certificate issued by the said Administrator pursuant to Section 14 of the Act;

(5) Transporting, offering for transportation, ship-

ping, delivering or selling in interstate commerce, as such term is defined in the Act, any goods produced by the co-partner defendants, trading as Southern Industries Company in their said place of business at Jacksonville, Florida, or elsewhere, in the production of which, or in any process or occupation, necessary to the production of which, any employee of the said co-partner defendants was employed in any workweek for a number of hours greater than the number prescribed in paragraph I(3) of this judgment, unless such employee received compensation for his employment in excess of such hours in such workweek at a rate not less than one and one-half times the regular rate at which he was employed;

(6) Failing to make, keep and preserve records of the persons employed by it and of the wages, hours and other conditions and practices of employment maintained by it as prescribed by the regulations, as amended, of the said Administrator issued pursuant to Section II (c) of the Act, which regulations, and amendments thereto, are known as Title 29, Chapter V, Code of Federal Regulations, Part 516, or by any amendments to such regulations, and particularly, but not in limitation of the provisions of this paragraph, from failing to make, keep, and preserve records of the hours worked each workday and each workweek by each of its said employees and of the total wages paid to each of its said employees for each workweek;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment is subject to the exemptions contained in Section 13 of the Act;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Jacksonville Paper Company is not subject to the provisions of the Act as to the operation of its following branches, nor as to the employees employed at said branches, to-wit: Tampa Paper Company, Tampa, Florida; Lakeland Paper Com-

pany, Lakeland, Florida; Central Paper Company, Orlando, Florida; East Coast Paper Company, West Palm Beach, Florida; Everglades Paper Company, Miami, Florida; Pinellas Paper Company, St. Petersburg, Florida, and Macon Paper Company, Macon, Georgia, and it is further ordered, adjudged and decreed that the injunction be denied and the complaint dismissed as to said branches of said defendant; and it is

FURTHER ORDERED, ADJUDGED AND DECREED That the costs of this action be equally divided.

DONE AND ORDERED at Tallahassee, Florida, this 29th day of August, A. D., 1941.

/s/ Curtis L. Waller,
Judge, United States District Court
for the Southern District of Florida.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Filed Oct. 1, 1941.

Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

Civil Action
File No. 209-J

JACKSONVILLE PAPER COM-
PANY, a corporation, et al,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, plaintiff in the above action, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from that part of the final judgment, dated August 29, 1941, and entered in this action on August 30, 1941, which provides as follows:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant Jacksonville Paper Company is not subject to the provisions of the Act as to the operation of its following branches, nor as to the employees employed at said branches, to-wit: Tampa Paper Company, Tampa, Florida; Lakeland Paper Company, Lakeland, Florida; Central Paper Company, Orlando, Florida; East Coast Paper Company, West Palm Beach, Florida; Everglades Paper Company, Miami, Florida; Pinellas Paper Company, St. Petersburg, Florida; and Macon Paper Company, Macon, Georgia, and it is further ordered, adjudged and decreed that the injunction be denied and the complaint dismissed as to said branches of said defendant; and it is

"FURTHER ORDERED, ADJUDGED AND DECREED That the costs of this action be equally divided."

This September 30, 1941.

/s/ Gerard D. Reilly,
Solicitor,

/s/ Irving J. Levy,
Assistant Solicitor in Charge of Litigation.

/s/ George A. Downing,
Regional Attorney

/s/ Abner Brodie,
Senior Attorney

/s/ Charles H. Spitz,
Associate Attorney,

United States Department of Labor
Attorneys for Plaintiff

Post Office Address:
c/o Wage and Hour Division
U. S. Department of Labor
Fifth Floor, Witt Bldg.
Atlanta, Ga.

or
c/o Wage and Hour Division
U. S. Department of Labor
Washington, D. C.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Filed Oct. 4, 1941.
Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

JACKSONVILLE PAPER COM-
PANY, a corporation, et al,

Defendants.

Civil Action
File No. 209-J

DESIGNATION OF RECORDS AND
PROCEEDINGS TO BE CONTAINED
IN THE RECORD

TO THE CLERK OF THE ABOVE NAMED COURT:

In accordance with Rule 75(a) of the Federal Rules of Civil Procedure, you are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to the Notice of Appeal filed in the above entitled cause, and to include in such transcript the following portions of the record, proceedings, and evidences:

- (1) Complaint filed July 8, 1940.
- (2) Answer of Jacksonville Paper Company filed December 30, 1940.
- (3) Pre-trial order entered April 15, 1941.
- (4) The testimony of the following witnesses appearing at the following pages of the stenographer's transcript of the proceedings at the trial:
 - (a) A. S. Reinoehl (pp. 43-76; 275-330; 404-408).
 - (b) C. G. McGehee (pp. 200-274).
 - (c) Carroll C. Ross (pp. 330-346; 383-404).
 - (d) Miss Rose Allen (pp. 346-355).
 - (e) James R. Williford, Jr. (pp. 355-383).
 - (f) H. D. Graham (pp. 410-438).
 - (g) Jesse B. Brown (pp. 429-447).
 - (h) Fred Rawls (pp. 447-471).
 - (i) J. W. Knight (pp. 471-487).
 - (j) George S. Wheeler. (pp. 488-514).

(5) Colloquy between the court and counsel, beginning with statement by the court at the fifth line from bottom of page 518 and continuing through sixth line on page 522.

(6) Written interrogatories to defendant, Jacksonville Paper Company, Nos. 3, 4, 5, 6, 7 and 8, filed April 30, 1941.

(7) Answer of defendant Jacksonville Paper Company to written interrogatories, Nos. 3, 4, 5, 6, 7 and 8, including exhibits attached, filed April 21, 1941.

(8) Depositions of the following witnesses, taken at Tampa, Florida, and filed March 5, 1941:

(a) Lee Parker

(b) Mrs. H. A. Ten Eyck

(c) Mrs. Fred L. Lewis

(d) Ernest H. Atkins

(9) Government Exhibit 1—Jacksonville Paper Company—List of Suppliers of Merchandise.

(10) Government Exhibit 2—Jacksonville Paper Company—Sample Book, Champion Kromekote Label.

(11) Government Exhibit 3—Jacksonville Paper Company—Map showing sources of products distributed by Jacksonville Paper Company.

(12) Government Exhibit 4—Jacksonville Paper Company—Chart showing flow of goods in stream of commerce.

(13) Government Exhibit 5—Jacksonville Paper Company—Chart showing strikes in wholesale trades industry, 1939.

(14) Findings of fact and conclusions of law, filed July 24, 1941.

(15) Judgment, dated August 29, 1941, and entered August 30, 1941.

(16) Notice of Appeal, filed October 1, 1941.

(17) Plaintiff's designation of contents of record.

(18) Appellant's statement of points upon which he intends to rely.

Dated, this October 4, 1941.

Attorney for Plaintiff.

/s/ Gerard D. Reilly
Solicitor

/s/ Irving J. Levy
Assistant Solicitor in Charge of Litigation.

/s/ George A. Downing
Regional Attorney

/s/ Abner Brodie
Senior Attorney

/s/ Charles H. Spitz
Associate Attorney

United States Department of Labor
Attorney for Plaintiff

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Filed Oct. 4, 1941.
Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

Civil Action
File No. 209-J

v.
JACKSONVILLE PAPER COM-
PANY, a corporation, et al,

Defendants.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY ON APPEAL

It is contended by appellant that the Court erred in the following particulars:

1. In holding that the defendant, Jacksonville Paper Company, is not subject to the provisions of the Act as to the operations of its following branches: Tampa Paper Company, Tampa, Florida; Lakeland Paper Company, Lakeland, Florida; Central Paper Company, Orlando, Florida; East Coast Paper Company, West Palm Beach, Florida; Everglades Paper Company, Miami, Florida; Pinellas Paper Company, St. Petersburg, Florida; and Macon Paper Company, Macon, Georgia.

2. In holding that the employees of Jacksonville Paper Company in the above branches are not engaged in interstate commerce.

3. In denying the injunction and in dismissing the complaint as to said branches.

4. In directing that any portion of the costs be taxed against the plaintiff.

DATED, this October 4th, 1941.

/s/ Gerard D. Reilly
Solicitor

/s/ Irving J. Levy
Assistant Solicitor in Charge of Litigation.

/s/ George A. Downing
Regional Attorney

/s/ Abner Brodie
Senior Attorney

/s/ Charles H. Spitz
Associate Attorney

United States Department of Labor
Attorneys for Appellant

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Filed Oct. 7, 1941.

Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

JACKSONVILLE PAPER COM-
PANY, a corporation, et al,
Defendants.

Civil Action
File No. 209-J

**AMENDMENT TO DESIGNATION OF RECORDS
AND PROCEEDINGS TO BE CONTAINED
IN THE RECORD**

TO THE CLERK OF THE ABOVE NAMED COURT:

Appellant files this, his amendment to the Designation of Records heretofore filed herein.

You will please include in the transcript of the record plaintiff's amendment to the complaint, filed March 25, 1941.

Dated, This October 6, 1941.

/s/ Gerard D. Reilly
Solicitor

/s/ Irving J. Levy
Assistant Solicitor in Charge of Litigation.

/s/ George A. Downing
Regional Attorney

/s/ Abner Brodie
Senior Attorney

Associate Attorney
United States Department of Labor

Attorney for Appellant

ORDER

Filed Oct. 8, 1941.

Edwin R. Williams, Clerk.

It appearing to the Court from plaintiff's foregoing motion that the original exhibits introduced by the Government are not of such a nature that they can be copied

by the clerk for inclusion in the record on appeal, and that such original exhibits should be inspected by the appellate court, upon consideration whereof.

IT IS HEREBY ORDERED AND ADJUDGED that Government Exhibits Nos. 1, 2, 3, 4 and 5 be sent to the appellate court in lieu of copies, and that such original exhibits be transmitted by the clerk under the same methods at the same time as the transcript of the record on appeal.

DONE AND ORDERED AT Jacksonville, Florida, this 8th day of October, 1941.

Curtis L. Waller, (sgd)
United States District Judge.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PHILIP B. FLEMING, ADMIN-
ISTRATOR of the WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

JACKSONVILLE PAPER COM-
PANY, a corporation, et al,

Defendants.

Civil Action
File No. 209-J

NOTICE OF CROSS APPEAL

Notice is hereby given that Jacksonville Paper Company, a corporation, Delia Crawford, McGehee, et al as co-partners, doing business as Southern Industries Company, and Clifford G. McGehee, individually, defendants in the above entitled cause, hereby severally appeal to the United States Circuit Court of Appeals for the Fifth

Circuit from that part of the final judgment dated August 29, 1941, and entered in said action on August 30, 1941, which provides as follows:

"I.

"ORDERED, ADJUDGED AND DECREED That the defendants, Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and Mr. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee, their officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in their respective behalves and interests, be and they are hereby severally permanently enjoined and restrained from:

"(1) Violating any of the provisions of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C., Title 29, Sec. 201, et seq.), hereinafter referred to as the Act, and more particularly from:

"(2) During the period from the date of this judgment to October 24, 1945, paying any of their employees, engaged in commerce or in the production of goods for commerce, employed at Jacksonville, Florida, or elsewhere, wages at rates less than thirty cents (30c) an hour, or, after October 23, 1945, paying any of their said employees wages at rates less than forty cents (40c) an hour, or the rate (not less than thirty cents (30c) an hour) prescribed in any applicable order of the Administrator of the Wage and Hour Division, United States Department of Labor, issued pursuant to the provisions of Section 8 of the Act, whichever is lower; or, at any time paying any of their said employees (except those for whom special certificates have been issued and are in effect) wages at rates less than the

rate (not in excess of forty cents (40c) an hour) prescribed in any applicable order of the said Administrator issued pursuant to the provisions of Section 8 of the Act, including the Wage Order for the Converted Paper Products Industry, promulgated by the Administrator, which became effective June 30, 1941 (Regulations, Part 598, Title 29, Chapter V. Code of Federal Regulations); or, at any time paying to any of their said employees employed pursuant to a special certificate issued and in effect pursuant to the provisions of Section 14 of the Act, wages at a rate less than the rate prescribed in such special certificate, contrary to the provisions of Section 6 and 15 (a) (2) of the Act;

"(3) Employing any of their said employees for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed, contrary to the provisions of Section 7 and 15 (a) (2) of the Act;

"(4) Shipping, delivering, or selling, with knowledge that shipment, delivery or sale thereof in commerce, as such term is defined in the Act, is intended, any goods produced in their place of business at Jacksonville, Florida, or elsewhere, in the production of which, or in any process or occupation necessary to the production of which, any employee was employed at wages less than the rates prescribed in Paragraph (2) of this judgment or in violation of any regulation, order or special certificate issued by the said Administrator pursuant to Section 14 of the Act;

"(5) Shipping, delivering, or selling, with knowledge that shipment, delivery or sale thereof in commerce, as such term is defined in the Act, is intended, any goods produced in their place of business at Jacksonville, Florida, or elsewhere, in the production of which, or in any process or occupation necessary to the production of which,

any employee was employed in any workweek for a number of hours greater than the number prescribed in Paragraph (3) of this judgment unless such employee received compensation for his employment in excess of such hours in such workweek at a rate not less than one and one-half times the regular rate at which he was employed;

"(6) Failing to make, keep and preserve records of the persons employed by them and of the wages, hours and other conditions, and practices of employment maintained by them as prescribed by the regulations, as amended, of the said Administrator issued pursuant to Section 11(c) of the Act, which regulations, and amendments thereto, are known as Title 29, Chapter V, Code of Federal Regulations, Part 516, or by any amendments to such regulations, and particularly, but not in limitation of the provisions of this paragraph, from failing to make, keep and preserve records of the hours worked each workday and each workweek by each of their said employees and of the total wages paid to each of their said employees for each workweek.

"II.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the defendant, Jacksonville Paper Company, a corporation, its officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in its behalf and interest, be and they hereby are permanently enjoined and restrained from:

"(1) Violating any of the provision of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U.S.C., Title 29, Sec. 201 et seq.), hereinafter referred to as the Act, as hereinafter more particularly set forth, to-wit:

"(2) During the period from the date of this judgment to October 24, 1945, paying any of its employees, engaged in commerce or in the production of goods for commerce, employed at its main office and warehouse at Jacksonville,

Florida; Capital Paper Company, Tallahassee, Florida; Pensacola Paper Company, Pensacola, Florida; Partin Paper Company, Mobile, Alabama, and Atlantic Paper Company, Savannah, Georgia, wages at rates less than thirty cents (30c) an hour; or, after October 23, 1945, paying any of its said employees wages at rates less than forty cents (40c) an hour, or the rate (not less than thirty cents (30c) an hour) prescribed in any applicable order of the Administrator of the Wage and Hour Division, United States Department of Labor, issued pursuant to the provisions of Section 8 of the Act, whichever is lower; or, at any time paying any of its said employees (except those for whom special certificates have been issued and are in effect) wages at rates less than the rate (not in excess of forty cents (40c) an hour) prescribed in any applicable order of the said Administrator issued pursuant to the provisions of Section 8 of the Act; or, at any time paying to any of its said employees employed pursuant to a special certificate issued and in effect pursuant to the provisions of Section 14 of the Act, wages at a rate less than the rate prescribed in such special certificate, contrary to the provisions of Sections 6 and 15(a) (2) of the Act;

"(3) Employing any of its said employees for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed, contrary to the provisions of Section 7 and 15(a) (2) of the Act;

"(4) Transporting, offering for transportation, shipping, delivering or selling in interstate commerce, as such term is defined in the Act, any goods produced by the co-partner defendants, trading as Southern Industries Company in their said place of business at Jacksonville, Florida, or elsewhere, in the production of which or in any process or occupation necessary to the production of which, any employee of the said co-partner defendants was em-

employed at wages less than the rates prescribed in paragraph I(2) of this judgment, or in violation of any regulation, order of special certificate issued by the said Administrator pursuant to Section 14 of the Act;

"(5) Transporting, offering for transportation, shipping, delivering or selling in interstate commerce, as such term is defined in the Act, any goods produced by the co-partner defendants, trading as Southern Industries Company in their said place of business at Jacksonville, Florida, or elsewhere, in the production of which, or in any process or occupation necessary to the production of which, any employee of the said co-partner defendants was employed in any workweek for a number of hours greater than the number prescribed in paragraph I(3) of this judgment, unless such employee received compensation for his employment in excess of such hours in such workweek at a rate not less than one and one-half times the regular rate at which he was employed;

"(6) Failing to make, keep and preserve records of the persons employed by it and of the wages, hours and other conditions and practices of employment maintained by it as prescribed by the regulations, as amended, of the said Administrator issued pursuant to Section 11(c) of the Act, which regulations, and amendments thereto, are known as Title 29, Chapter V, Code of Federal Regulations, Part 516, or by any amendments to such regulations, and particularly, but not in limitation of the provisions of this paragraph, from failing to make, keep, and preserve records of the hours worked each workday and each workweek by each of its said employees and of the total wages paid to each of its said employees for each workweek."

And,

"FURTHER ORDERED, ADJUDGED, and DECREED that the costs of this action can be equally divided."

Dated this 15th day of October, A. D. 1941.

RAGLAND, KURZ & LAYTON,

By L. Kurz
Attorneys for Defendants,
608 Consolidated Building,
Jacksonville, Florida.

Copy of the foregoing Notice of Cross Appeal received this 16th day of October, A. D. 1941.

(s) Chas. H. Spitz
Associate Attorney,

United States Department of Labor.

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION.

PHILIP B. FLEMING, ADMINISTRA-
TOR of the WAGE AND HOUR
DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

Civil Action
File No. 209-J

JACKSONVILLE PAPER COMPANY,
a corporation, ET AL,

Defendants.

DESIGNATION OF RECORD AND PROCEEDINGS
TO BE INCLUDED IN TRANSCRIPT OF RECORD.
TO THE CLERK OF THE ABOVE NAMED COURT:

You are hereby requested to make up a transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to the Notice of Cross Appeal filed in the above entitled cause by

Jacksonville Paper Company, a corporation, Delia Crawford McGehee, et al, co-partners, doing business as Southern Industries Company, and Clifford G. McGehee, individually, filed in the above entitled cause, and to include in such transcript in addition to the records and proceedings designated in connection with the appeal of Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, the following:

1. Answer of C. G. McGehee, et al, filed December 30, 1940.

2. That portion of the stipulation entered into on March 25, 1941, between counsel for the respective parties reading as follows:

"It is further stipulated that the answer filed by Clifford G. McGehee, M. R. McGehee, and C. C. McGehee, sued as co-partners doing business as Southern Industries, may stand as and for the answer of the defendant C. G. McGehee."

3. Notice of appeal filed the 16 day of October, 1941.

4. The designation of contents of record on cross appeal filed by the defendants, Jacksonville Paper Company, a corporation, Delia Crawford McGehee, et al, co-partners, doing business as Southern Industries Company, and Clifford G. McGehee, individually.

5. Statement of points upon which the cross appellants will rely in the appellate court, dated October 15, 1941.

Dated, this 16th day of October, A. D. 1941.

RAGLAND, KURZ & LAYTON

By L. Kurz

Attorneys for Defendants,

608 Consolidated Building,
Jacksonville, Florida.

Copy of the foregoing Designation of Record and Proceedings to be Included in Transcript of Record received this 16th day of October, A. D. 1941.

(s) Chas. H. Spitz
Charles H. Spitz, Associate Attorney,
United States Department of Labor,
Attorney for Appellant.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Filed Oct. 14, 1941.
Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMINISTRA-
TOR of the WAGE AND HOUR
DIVISION, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

Civil Action
File No. 209-J

v.
JACKSONVILLE PAPER COMPANY,
a corporation, ET AL,

Defendants.

DESIGNATION OF ADDITIONAL RECORDS AND
PROCEEDINGS TO BE INCLUDED IN TRAN-
SCRIPT OF RECORD.

To the Clerk of the above named Court:

You are hereby requested to include in the transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit pursuant to the Notice of Appeal filed in the above entitled cause the following

additional portions of the record, proceedings and evidence in the above entitled cause:

1. All of the testimony, proceedings, evidence and exhibits, including interrogatories and answers to interrogatories and depositions offered and introduced at the trial of said cause not included in the designation of records and proceedings filed by the plaintiff, except depositions taken at Mobile, Alabama and Pensacola and Tallahassee, Florida.

RAGLAND, KURZ & LAYTON,

By /s/ L. Kurz

608 Consolidated Building,

Jacksonville, Florida.

Attorneys for Defendants.

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF FLORIDA.
JACKSONVILLE DIVISION.

Filed Oct. 16, 1941.

Edwin R. Williams, Clerk.

PHILIP B. FLEMING, ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

JACKSONVILLE PAPER COMPANY,
a corporation, ET AL,

Defendants.

Civil Action
File No. 209-J

STATEMENT OF POINTS UPON WHICH CROSS
APPELLANT'S INTEND TO RELY ON CROSS
APPEAL

It is contended by the cross appellants, Jacksonville Paper Company, a corporation, Delia Crawford McGehee, et al, co-partners, doing business as Southern Industries Company, and Clifford G. McGehee, individually, that the Court erred in the following particulars:

1. In holding that the defendants, Delia Crawford McGehee, et al, doing business as Southern Industries Company, are subject to the provisions of the Act.
2. In granting an injunction against the defendants, notwithstanding compliance with the Act for a period of time long prior to the filing of the bill of complaint.
3. In declining to receive evidence of compliance with the provisions of the Act at the time of the filing of the bill of complaint and long prior thereto.
4. In directing that any portion of the costs be taxed against these defendants.

This 16th day of October, A. D. 1941.

RAGLAND, KURZ & LAYTON

By L. Kurz

Attorneys for Cross Appellants,
608 Consolidated Building,
Jacksonville, Florida.

Copy of the foregoing Statement of Points Upon Which Cross Appellants Intend To Rely On Cross Appeal received this 16th day of October, A. D. 1941.

/s/ Charles H. Spitz
Charles H. Spitz, Associate Attorney,
United States Department of Labor
Attorney for Appellant.

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF FLORIDA

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said court, do hereby certify that the foregoing pages numbered from one to seven hundred forty-six, inclusive contain a correct transcript of the record of the judgment in the case of Phillip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, plaintiff, against Clifford G. McGehee, etc. et al., defendants, and a true copy of all such papers and proceedings in said cause, as they appear upon the records and files of my office, that have been directed to be included in said transcript by the written demands of the said parties.

IN WITNESS whereof I hereunto set my hand and affix the seal of said Court at Jacksonville, Florida, this 27th day of October, A. D. 1941.

Edwin R. Williams
Southern District of Florida
U. S. District Court
Edwin R. Williams, Clerk

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Joint Stipulation of Counsel to Substitute L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Appellant, in Place and Stead of Philip B. Fleming, Resigned

Filed March 30th, 1942

In the United States Circuit Court of Appeals Fifth Circuit

No. 10118

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR, APPELLANT AND CROSS-
APPELLEE

vs.

JACKSONVILLE PAPER COMPANY, ET AL., APPELLEES AND CROSS-APPEL-
LANTS

(And Reverse Title)

Appeal and Cross-Appeal from the District Court of the United
States for the Southern District of Florida

Stipulation for substitution of parties

It is hereby stipulated and agreed by and between the parties hereto as follows:

1. On December 10, 1941, Baird Snyder, III, became the duly qualified and Acting Administrator of the Wage and Hour Division, United States Department of Labor, succeeding Philip B. Fleming, the above named appellant and cross-appellee, whose resignation as Administrator of the Wage and Hour Division, United States Department of Labor, became effective December 10, 1941.

2. Thomas W. Holland on December 31, 1941, became the duly qualified and Acting Administrator of the Wage and Hour Division, United States Department of Labor, succeeding Baird Snyder, III, whose resignation as Acting Administrator of the Wage and Hour Division, United States Department of Labor, became effective December 31, 1941; that Thomas W. Holland, on January 3, 1942, became the duly qualified Administrator of the Wage and Hour Division, United States Department of Labor.

3. L. Metcalfe Walling on March 7, 1942, became the duly qualified administrator of the Wage and Hour Division, United States Department of Labor, succeeding Thomas W. Holland who resigned.

4. That the said L. Metcalfe Walling may be substituted as Appellant and Cross-Appellee in this cause in the place and stead of the said Philip B. Fleming without prejudice to any of the proceedings already had in the action.

Dated March 26, 1942.

(Signed) WARNER W. GARDNER,
Warner W. Gardner,

Solicitor,

(Signed) IRVING J. LEVY,
Irving J. Levy,

Associate Solicitor,

(Signed) MORTIMER B. WOLF,
Mortimer B. Wolf,

Assistant Solicitor,

(Signed) GEO. A. DOWNING,
George A. Downing,

Regional Attorney,

*United States Department of Labor,
Attorneys for Appellant and Cross-Appellee.*

RAGLAND, KURTZ & LAYTON,

(Signed) L. KURTZ,

Attorneys for Appellees and Cross-Appellants.

Order of substitution

Extract from the Minutes of March 30th, 1942

No. 10118

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR

vs.

JACKSONVILLE PAPER COMPANY, ET AL.,

(And Reverse Title)

Order for substitution of parties

It appearing to the Court from the stipulation of the parties filed herein as of this date that Baird Snyder, III, became on December 10, 1941, the duly qualified and Acting Administrator of the Wage and Hour Division, United States Department of Labor, succeeding Philip B. Fleming, the above named appellant and cross-appellee, whose resignation as Administrator of the Wage and Hour Division, United States Department of Labor, became effective December 10, 1941; that Thomas W. Holland on December 31, 1941, became the

duly qualified and Acting Administrator of the Wage and Hour Division, United States Department of Labor, succeeding Baird Snyder, III, whose resignation as Acting Administrator of the Wage and Hour Division, United States Department of Labor, became effective December 1, 1941; that Thomas W. Holland on January 3, 1942, became the duly qualified Administrator of the Wage and Hour Division, United States Department of Labor; that L. Metcalfe Walling became on March 7, 1942, the duly qualified Administrator of the Wage and Hour Division, United States Department of Labor, succeeding Thomas W. Holland who resigned; and the said parties having stipulated and agreed that the said L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, should be substituted as appellant and cross-appellee in this cause in the place and stead of Philip B. Fleming; upon consideration whereof it is

Ordered that L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, be, and he is, hereby substituted as appellant and cross-appellee herein in the place and stead of Philip B. Fleming, without prejudice to the proceedings already had in this action.

Dated March 30th, 1942.

(Signed) RUFUS E. FOSTER,
Judge, U. S. Circuit Court of Appeals for the Fifth Circuit.

Argument and submission.

Extract from the Minutes of May 11th, 1942.

No. 10118

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR (L. METCALFE WALLING,
ADMINISTRATOR, ETC., SUBSTITUTED IN THE PLACE OF PHILIP B.
FLEMING, RESIGNED)

vs.

JACKSONVILLE PAPER COMPANY, ET AL.

(And Reverse Title)

On this day this cause was called, and, after argument by Mortimer B. Wolf, Esq., Assistant Solicitor, U. S. Department of Labor, for appellant and cross-appellee, and Louis Kurz, Esq., for appellees and cross-appellants, was submitted to the Court.

Opinion of the court

Filed May 25th, 1942

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 10118

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR (L. METCALFE WALLING,
ADMINISTRATOR, ETC., SUBSTITUTED IN THE PLACE OF PHILIP B.
FLEMING, RESIGNED), APPELLANT AND CROSS-APPELLEE

vs.

JACKSONVILLE PAPER COMPANY, ET AL., APPELLEES AND CROSS-APPELLANTS

(And Reverse Title)

Appeal and Cross-Appeal from the District Court of the United
States for the Southern District of Florida

(May 25, 1942)

Before SIBLEY, HOLMES, and McCORD, Circuit Judges

SIBLEY, Circuit Judge: The Jacksonville Paper Company is a very large wholesale distributor of paper and paper products whose main office and warehouse are in Jacksonville, Florida, but which maintains branch warehouses in twelve other cities in Florida and in two other States. Some of the products it sells are manufactured in Florida by a partnership composed of certain of its officers and stockholders and known as Southern Industries Company. But most of them it purchases in States other than Florida for shipment by boat, rail, or truck across States lines to the various warehouses. The employees of Jacksonville Paper Company order these goods, keep the books concerning them, and make payment for them, and also haul them in from the wharves or freight depots, and unload the freight cars and trucks which bring them to the several warehouses. After sale to the customers the goods are delivered by Jacksonville Paper Company's trucks. Frequently goods have been resold before they are ordered, and are intended for and presently delivered to these very customers. Quite often they are specially manufactured for such customers, and bear their names. Often, too, they are trucked to customers direct from the wharf or freight car without being deposited in the warehouses. But stocks of merchandise are regularly maintained in the warehouses and the major part of the goods handled are deposited there for a greater or less time until resold or ordered out. At some of the warehouses the sales out are all within the State. At others sales are made across State lines. Practically the entire production of Southern Industries Company is taken by

Jacksonville Paper Company, and a large part is thus shipped regularly interstate to the warehouses outside Florida.

Warehouses and factory were all inspected by the Wage and Hour Administrator in December 1939, and January 1940, and he concluded all had employees engaged in commerce within Sections 6 and 7 of the Fair Labor Standards Act, with which there was not compliance. Southern Industries Company and five of the warehouses, which were selling interstate, were conceded to have employees protected under the Act, but it is claimed they have observed it since April 27, 1940. On July 8, 1940, however, the Administrator filed suit to restrain violations against Jacksonville Paper Company and Southern Industries Company. The court granted an injunction against the latter, and against the former as to the warehouses which sold interstate, but refused it as to the other warehouses, and gave judgment for costs equally divided. Both sides appeal.

It will be helpful first to notice some general principles. Sections 6 and 7 of the Act deal with an "employee who is engaged in commerce, or in the production of goods for commerce." It is the employment of the particular employee and not the business of the employer, which is to be regarded. Yet the two are closely related, because the employee's work cannot be in commerce unless the employer's business is to that extent in commerce. On the other hand, the employer may be largely engaged in commerce, but the particular employee, engaged in some other work, may not be. The percentage of the employer's business intrastate as compared with that interstate proves little. The question must be whether the work of the particular employee for the time in question is in commerce or in the production of goods for commerce. His whole time and work need not be thus in commerce, because the Act does not make any distinction of that sort. If a substantial part of his work is in commerce or in producing goods for commerce, he must be dealt with according to the Act. And "commerce" must not be limited to "transportation." Section 3, which is the dictionary of the Act, declares that "Commerce means trade, commerce, transportation, transmission, or communication" interstate. Transportation is only a part of it. Trade is another part, and according to the old maxim, it takes two to make a trade. Importer as well as exporter, buyer as well as seller, is a participant; and ordering and paying for goods are included. If across State lines all those engaged in such work are in commerce. The Act, Sect. 13 (a) 2 excepts employees in a retail or service establishment the greater part of whose selling is in intrastate commerce, so that all employees of these are under or not under the Act. A wholesaler like Jacksonville Paper Company is not included in this exception, and must pay its employees who are employed in any phase of commerce according to the Act, although all its sales may be made intrastate.

There can be no hard and fast line drawn between the employees at one of these warehouses and those at another. The employees who

work exclusively in intrastate business at any of them are not under the Act. Those who work either at selling or delivering across State lines, or at buying and receiving across State lines, are employed in commerce, whether they write the letters, keep the books, or load and unload or drive the trucks. As we understand the record, some of this is done at every warehouse. The unloading at destination of an interstate shipment is work in interstate transportation, whether done by the carrier or another. *Baltimore and S. W. R. R. vs. Burch*, 263 U. S. 540; *Puget Sound Stevedoring Co. vs. Tax Commission*, 302 U. S. 90. And the purchase of goods to be transported across State lines is interstate commerce as truly as the transportation itself. *Curran vs. Wallace*, 306 U. S. 1, and cases cited on page 10.

Without reviewing the multitude of decided cases as to when interstate transportation ends,¹ we are justified in holding that after imported goods are delivered to and received by the importer, and become part of his property held within the State subject to his disposition, whether in the original containers or not, the subsequent sale and delivery of them within the State is intrastate commerce. The typical case is a stock of goods in a warehouse awaiting sales. It does not matter that the goods were imported with a view to selling them afterwards to particular customers, or that according to past experience they would likely be sold to them, or would surely be sold to someone very soon. If they come to rest in the hands of the importer, they have ceased to be in interstate commerce because of their importation, and his employees thereafter engaging solely in selling them within the State are not employed in interstate commerce.

There are, however, border like distinctions. Where *Jacksonville Paper Company* takes an order from a customer for goods and purchases them in another State to fill that order, and they are shipped interstate with the definite intention that those goods be carried at once to that customer and they are so carried; the whole movement is interstate, and the fact that title may have passed during transit, or that vehicles may have been changed, will not prevent the entire work of delivery to their final destination being an employment in commerce. Where, however, the purpose to deliver particular goods to fill a particular precedent order arises only after the goods come to rest at their originally intended destination, the new intrastate transportation afterwards undertaken will not be a part of the original interstate movement, and employees aiding only the intrastate movement are not thereby employed in commerce under the Act.

We therefore do not agree with the District Court that a line can be drawn between all the employees at one warehouse and all those at another. Nor do we agree with the Administrator that all employees at all the warehouses are necessarily under the Act because the goods they handle were imported for sale.² The employment of

¹ See 11 Am. Jur., Commerce, especially §§ 43, 45, 62, 63, 64, 66, 69, 71, 74.

² We so held in *Jax Beer Co. vs. Redfern*, 124 Fed. (2d) 172, and *Swift and Co. vs. Wiggins*, 124 Fed. (2d) 176.

each employee must be looked to, wherever he may work, to see whether a substantial part of his work during the wage period is in commerce, or not. We think it likely that it will appear that some employees at every warehouse are employed in commerce, and the Administrator in that event will be entitled to declaratory or other relief covering such employees at all the warehouses.

Southern Industries Company as to its employees producing goods for commerce and Jacksonville Paper Company as to those warehouses where employees are conceded to be employed in commerce, say that relief by injunction ought not to be granted because violations of the Act had ceased at latest by April 27, 1940, about six weeks before the suit was filed, and because an injunction will not issue to prevent that which is not threatened or has ceased; citing *Industrial Assn. vs. United States*, 268 U. S. 64, 84; *United States vs. U. S. Steel Corp.*, 251 U. S. 417, 444; *Bealse's Safety Transit Co.*, 50 Fed. (2) 852, 856; *Champion Spark Plug Co. vs. Reich*, 121 Fed (2) 769. The Administrator points to Sect. 17 of the Act giving the court jurisdiction "for cause shown . . . to restrain violations," and to such cases as *United States vs. Trans-Missouri Freight Assn.*, 166 U. S. 290, 369; *Federal Trade Commission vs. Goodyear Co.*, 304 U. S. 259, 260; *National Labor Relations Board, Etc. vs. Pennsylvania Greyhound Lines*, 303 U. S. 261, 271; and he contends that injunctions to establish public rights stand on a different footing from those in private matters. We are of opinion that Section 17 gives jurisdiction to grant but does not require in every case the grant of an injunction. Injunction is here, as it usually is, in the discretion of the court. This case is not one where the violations were dead issues at the filing of the suit; nor was cessation entirely voluntary, but was the result of recent official pressure. And Jacksonville Paper Company and the Administrator were still at serious issue as to some applications of the law. The District Court refused to hear evidence as to violations between April 27, 1940, and the filing of the suit. We think it would have been in order to hear whether the violations were continuing and whether if they had ceased there was no purpose to renew them; but it is clear there had been recent violations, and there was still contention, and this was enough to ground the grant of injunction upon.

It was error, however, to grant an injunction as broadly as was done, for it reads: "from violating *any* of the provisions of the Fair Labor Standards Act of 1938." Such an injunction would put the defendants in contempt of court if thereafter in any way they violated this law, whereas it should have been restricted to a repetition of such violations as were found to have been committed, and similar ones. *New Haven Rd. vs. Interstate Commerce Commission*, 200 U. S. 362, 404. A limited injunction was also granted, but as to Jacksonville Paper Company it refers to employees at named warehouses and offices only.

We need not pass upon the question whether the judgment for divided costs is good as against the Administrator, who asserts he stands as the United States in being immune against costs, for we shall reverse the judgment on the grounds above discussed, and this question is not likely to recur in the case.

We do not undertake to frame a decree appropriate to the whole situation, thinking it can best be done with the aid of counsel in the court below. We therefore reverse the judgment and remand the cause for such modification of the findings as ought to be made and a new decree in accordance with this opinion.

Judgment

Extract from the Minutes of May 25th, 1942

No. 10118

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR (L. METCALFE WALLING,
ADMINISTRATOR, ETC., SUBSTITUTED IN THE PLACE OF PHILIP B.
FLEMING, RESIGNED)

vs.

JACKSONVILLE PAPER COMPANY, ET AL.

(And Reverse Title)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for such modification of the findings as ought to be made and a new decree in accordance with the opinion of this Court.

Clerk's certificate

United States of America

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 739 to 750, next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court,

numbered 10118, wherein Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor (L. Metcalfe Walling, Administrator, etc., substituted in the place of Philip B. Fleming, resigned), is appellant and cross-appellee; and the Jacksonville Paper Company et al., are appellees and cross-appellants, as full, true, and complete as the originals of the same now remain in my office.

I farther certify that the pages of the printed record, numbered from 1 to 738, are identical with the printed record upon which said cause was heard and decided in the said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix, the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana; in the Fifth Circuit, this 3rd day of July A. D. 1942.

[SEAL]

OAKLEY F. DODD,
*Clerk of the United States Circuit Court,
of Appeals, Fifth Circuit.*

Supreme Court of the United States

Order allowing certiorari

Filed October 19, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument immediately following No. 97, Higgins vs. Carr Bros. Co.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.